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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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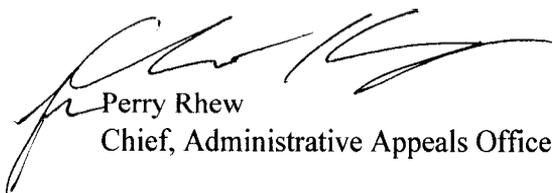
APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport that did not belong to him. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the Field Office Director*, dated July 16, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on April 16, 1994; a sworn statement and an affidavit from two sworn statements from the applicant; copies of the birth certificates of the couple's two U.S. citizen children; a psychosocial assessment of the family; voluminous background materials on country conditions in Pakistan, including copies of the U.S. Department of State's Country Reports on Human Rights Practices for Pakistan and Travel Warning for Pakistan; letters from the couple's child's physician; copies of financial and tax documents; letters from the applicant's employer; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

The record shows, and the applicant admits, that in November 1992, the applicant entered the United States using another person's passport. *Record of Sworn Statement - Witness*, dated August 16, 1999. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact to procure an immigration benefit.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Court of Appeals for the Ninth Circuit has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9<sup>th</sup> Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the applicant's naturalized U.S. citizen wife, [REDACTED] states that she and her husband were married in April 1994, have never spent a night away from each other, and have never been separated from their two children since the day they were born. [REDACTED] states that her mother, five brothers, one sister, and her aunt and uncle are all U.S. citizens or lawful permanent residents and all live in Skokie, Illinois. She states that the only relative she has outside of Skokie, Illinois, is one brother who lives in Pakistan. [REDACTED] states she could not bear separating from her family. In addition, [REDACTED] states that she has only held one job in her entire life, which was during two or three months when she worked at a Dunkin' Donuts after her husband became unemployed. She states that if her husband's waiver application were denied, she could not depend on her family for financial support and that none of them have "the space to house [her and her children]." [REDACTED] claims she does not have any marketable skills to find a job and her ability to work is limited because she suffers from low blood pressure and cannot stand for long periods of time. Furthermore, [REDACTED] contends she home schools her son, [REDACTED], and that if she had to work, she would be unable to continue home schooling him. Moreover, [REDACTED] states that if she moved back to Pakistan, where she was born, it is not customary for women to work in Pakistan. She contends the economy is bad and even though her husband's parents and siblings continue to live in Pakistan, they would be unable to assist her family financially as they struggle for their own economic survival.

[REDACTED] also states that her daughter has suffered from rickets and vitamin D deficiency and continues to be monitored for these problems. She states her daughter's "wrists, ankles, and her neck bones are hard." According to [REDACTED] her son suffers from low hemoglobin and the beginning stages of a vitamin D deficiency. She states the medical care in Pakistan is "substandard at best" and that they may not be able to afford taking their children to doctors or pay for preventative treatment. [REDACTED] states that she suffers from low blood pressure and low hemoglobin, and that she has an extensive family history of diabetes. She further states that she has problems standing for long periods of time because of a foot injury she sustained several years ago that required surgery. In addition, [REDACTED] contends her children do not speak Urdu and she fears raising her daughter in Pakistan where the educational opportunities for girls are very limited. Sworn Statement from [REDACTED], dated September 28, 2007; Affidavit from [REDACTED] dated November 12, 2001.

A Psychosocial Assessment in the record states that applicant's marriage to [REDACTED] was an arranged marriage and that neither of them had other relationships prior to their marriage. According to the assessment, [REDACTED] "went from living with her mother and two brothers to living with [the applicant]," and has never lived or slept alone. The assessment states that [REDACTED] slept with her mother until she was in her twenties and that, as a child, she slept together with her parents and one brother. The assessment also states that [REDACTED] father died from asthma when she was eleven or twelve years old and that "she suffered a lot" growing up without a father, "which is why [she] want[s] [her] kids to have their father." [REDACTED] reported being afraid to stay by herself and if her husband is late coming home from work, she is "afraid he's dead." According to the social worker, although [REDACTED] denied thoughts of suicide, [REDACTED] stated she prefers to die before her husband rather than be left alone. In addition, the assessment

states [REDACTED] is afraid to drive and depends on her husband to drive her to most places. The assessment further contends that the applicant and his wife are always together and they have never been separated from their children. They all sleep in the same room and the children can't fall asleep without their father. If the applicant comes home late, the children stay up waiting for him, and the couple's daughter "won't eat until her father comes home." The social worker further states that the applicant and [REDACTED] do not allow the kids to sleep over at other people's houses and only allow them to play with relatives.

The assessment further states that [REDACTED] weighed only seventy-five pounds when she first came to the United States in 1993 and that she has gained fifteen pounds in the last year. According to the assessment, [REDACTED] suffers from low blood pressure, vomiting, diarrhea, hair loss, an itchy skin rash all over her body, tooth pain, pain in her chest, hand, back, ears, and the side of her neck, pain when walking and trouble standing, numbness in her hand, insomnia, uncontrollably blinking her eyes, and digestive problems. Furthermore, the assessment states that the couple's daughter "needed physical therapy because her hands and legs weren't working well[, she] couldn't control her neck and her speech wasn't clear." [REDACTED] blames herself for her daughter's health problems because she "believe[s] the reason [her] daughter got sick [was] because [she] didn't drink milk during [her] pregnancy." The assessment also states that even though the couple's daughter is doing better now, her leg still hurts, she has trouble walking, and the doctor said she "may need surgery in the future if her leg pains don't stop." According to the social worker, the couple's son is beginning to show similar signs of a vitamin deficiency. The social worker concludes that she suspects [REDACTED] "appears to have been anorexic in the past" and that increased stress may lead to a recurrence of her eating problems.

The social worker further concludes that [REDACTED] is "highly dependent on her husband," both financially as well as emotionally, and that "[b]ecause of the extreme dependence, [REDACTED] will have difficulty functioning independently." In addition, the social worker concludes the entire family exhibited significant separation, abandonment, and loss issues, as shown by "never using an outside person or a relative to babysit the children; the children sleeping with their parents since birth; [the son] being homeschooled; [REDACTED] living within a few blocks of her family; fears expressed by all four of them about each other dying; [REDACTED] sleeping with her mother until she was in her twenties, etc." The social worker concludes that given "[t]he intensity of the separation issues," the applicant's departure to Pakistan would be "traumatic." *Psychosocial Assessment of the [REDACTED] Family*, dated August 30, 2007.

The record also contains two letters from the couple's child, [REDACTED] physician. According to the first letter, [REDACTED] had "gross rachitic lesions in her wrists, knees, and ankles as well as her skull" and states that the cause of her "severe rachitic bone disease is long-standing vitamin D depletion." The doctor concludes that "in almost 20 years of metabolic bone practice, this is the single worst case of rickets not associated with renal insufficiency that [he has] seen. It is likely going to require orthopedic surgery once her growth has ceased in adolescence to effect better bones." *Letter from [REDACTED]*, dated December 8, 1999. However, a letter from the same physician dated less than eighteen months later states that "[REDACTED] has normalized her vitamin D metabolic status[.]

has evidence of radiographic healing of her rickets with no new rachitic lesions[, and] has recovered from this disease.” *Letter from* [REDACTED], dated April 15, 2001.

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his wife will experience extreme hardship if his waiver application is denied.

It is evident from the record that the emotional hardship that would result from the denial of a waiver of inadmissibility constitutes extreme hardship. The record shows that [REDACTED] is extremely **dependent** on her husband and has never functioned independently. The record indicates that [REDACTED] slept with her mother until she was in her twenties, married the applicant in an arranged marriage, has never been separated from either her husband or her children for one night, and sleeps with her husband and children in the same room every night. [REDACTED] has never worked, with the exception of the two or three months she worked at Dunkin’ Donuts, and she does not believe she has any marketable skills. She does not drive, home schools her son, and does not permit her children to play with non-relatives. The record shows [REDACTED] lost her father when she was young, constantly fears her husband will die, and would herself prefer to die rather than be left alone. Based on these factors, the social worker reasonably concluded that [REDACTED] would be unable to function independently should the applicant’s waiver application be denied and that separation from the applicant would be traumatic. *Psychosocial Assessment of the [REDACTED] Family, supra.* Accordingly, the AAO finds that the effect of separation from the applicant on [REDACTED] go above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship.

It would also constitute extreme hardship for [REDACTED] to return to Pakistan to avoid the hardship of separation from her husband. The record shows that [REDACTED] has lived in the United States since 1993. [REDACTED] would need to readjust to a life in Pakistan after having lived in the United States for sixteen years, a difficult situation made even more complicated considering her two U.S. citizen children do not speak Urdu and her daughter had a very serious case of rickets which might, at some point, require surgery. Furthermore, evidence of country conditions in the record warns U.S. citizens against non-essential travel to Pakistan in light of the threat of terrorist activity. *Travel Warning, United States Department of State, dated September 21, 2007.* In sum, the hardship [REDACTED] would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant’s entry into the United States using a fraudulent passport, his resulting unlawful presence in the country, and documentation in the record indicating that in July 1997, he pled guilty to operating a business without a business license and the

unauthorized use of a trademark. The favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including his U.S. citizen wife and two U.S. citizen children; the extreme hardship to the applicant's wife if he were refused admission; the applicant's acknowledgement of and apology for violating the immigration laws; letters from the applicant's employer describing him as "an indispensable asset to [the] company," *Letters from* [REDACTED] dated January 24, 2001, and June 28, 1999; the applicant's history of working and paying taxes in the United States; and the applicant's lack of any other criminal convictions for over twelve years.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.