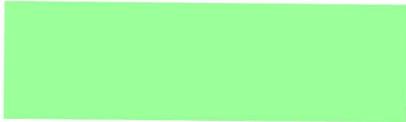


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

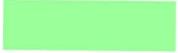


U.S. Citizenship
and Immigration
Services

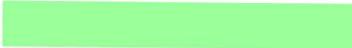


Date: FEB 28 2014

Office: HARTFORD FIELD OFFICE

FILE: 

IN RE:

Applicant: 

APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


f. -

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Hartford, Connecticut, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Pakistan who was found inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure an immigration benefit in the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act and section 212(i) of the Act order to reside in the United States with his U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 28, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the field office director abused her discretion and did not apply the proper standard in failing to find extreme hardship to the qualifying relative. With the appeal counsel submits a brief, a letter from the spouse's medical doctor, letters from the employers of the applicant and spouse stating their respective lengths of employment, letters of support for the applicant from community members, and country information for Pakistan. The record contains an affidavit from the applicant and his spouse, a psychological evaluation of the applicant's spouse, and financial documentation submitted in support of the applicant's Application to Adjust Status (I-485), filed on September 15, 2010.

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that on October 6, [REDACTED], the applicant was convicted in the Supreme Court of the State of New York, [REDACTED] under P.L. 215.15.01, of Intimidating a Victim or Witness in the Third Degree. The field office director determined that the applicant was convicted of a crime involving moral turpitude. As counsel and the applicant have not disputed on appeal that this conviction is a crime involving moral turpitude, and the record does not show the finding of inadmissibility to be erroneous, we will therefore not disturb the finding of the field office director.

Section 212(h) of the Act provides, in pertinent part, that:

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

...

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it established to the satisfaction of the [Secretary] that the alien’s denial of admission would result in extreme hardship to the United States

citizen or lawfully resident spouse, parent, son, or daughter of such alien...

(2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as [she] may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure an immigration benefit in the United States by fraud or willful misrepresentation. The field office director found that the applicant had provided false information on an Application for Asylum and Withholding of Removal (Form I-589).

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) 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) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien . . .

The field office director found that the applicant had provided false information on an Application for Asylum and Withholding of Removal, and based on this information determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act.

In his brief, counsel for the applicant contends that the applicant did not make a misrepresentation in his asylum application because he had ineffective assistance of counsel at that time, the application was submitted without the applicant's approval, the applicant was unaware of the contents, and the applicant never pursued the claim for asylum. However, the record reflects that at an interview for his Application to Adjust Status the applicant confirmed his signature on the I-589, and stated that he was aware of the information contained in the application and that the information was not correct. The form I-589 contains no separate signature in the preparer's block. Although counsel asserts the applicant was the victim of ineffective assistance of counsel, he has not submitted evidence to overcome the finding of the field office director that the applicant is inadmissible for misrepresentation. In visa petition proceedings, the burden is on the petitioner to establish eligibility

for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO finds that the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for a visa, so the applicant is eligible to apply for a waiver under section 212(h)(1)(A) of the Act. However, because the applicant has also been found inadmissible under section 212(a)(6)(C)(i) of the Act, he must also establish that he qualifies for a waiver under section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In his brief counsel asserts that the applicant’s spouse has medical conditions including depression, recurring pain that exacerbates her depression, and anxiety, and she is monitored biweekly to ensure that her condition does not become life-threatening. Counsel states that should the spouse’s condition become unbearable she will undergo a hysterectomy. Counsel states that the spouse’s medical conditions are complicated by her trying to become pregnant, and that as she is undergoing fertility treatment, the applicant’s presence is necessary for continued support.

Counsel further asserts that due to health problems the applicant’s spouse misses work at times, so she depends on the applicant’s income in addition to her own. Counsel also contends that if the spouse remains in the United States without the applicant she would be unable to support herself entirely and would be unable to visit the applicant in Pakistan.

In her affidavit she states that the applicant is her strength and support and that time spent with him is the happiest of her life. She states that she is trying to have a child, but suffers severe menstrual pain and it is difficult to conceive. She states that she was diagnosed with major depressive disorder, anxiety, and hypertension due mainly to the applicant’s immigration problem and her inability to get pregnant, and that she has regularly received psychiatric care for more than two years, taking limited medication because of trying to get pregnant. A letter from the spouse’s medical doctor states that she has a history of adenomyosis, hypothyroidism and depression, with pain and vaginal bleeding that impact her everyday life by causing her to avoid activities. The letter states that there is a

possibility of a hysterectomy, calling it a risky and invasive surgery, and that the spouse is undergoing fertility treatment.

A 2011 psychological evaluation notes the spouse's medical history and states that being unable to conceive causes anxiety. The evaluation states that the spouse is diagnosed with major depressive disorder and it further states that the applicant's spouse could benefit with a closely monitored trial of antidepressants, but that she needs family support. A March 2013 letter from a medical doctor states he has treated the applicant's spouse since 1998 and that she is taking prescribed psychotropic medication.

The AAO finds that the record establishes that the applicant's qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. Having reviewed the preceding evidence and noting the spouse's medical and emotional condition, the AAO finds it to establish that the applicant's spouse would experience hardship beyond the common results of removal or inadmissibility if she were separated from the applicant.

Regarding the spouse relocating to Pakistan to reside with the applicant, counsel asserts that the family members of the applicant's spouse all live in the United States, the family is extremely close and has strong bonds, and she visits with her family often. Counsel asserts that the applicant's spouse came to the United States more than 20 years ago and is assimilated in manner and ideology. Counsel states that country conditions information indicates that Pakistan is dangerous, becoming increasingly radical and violent, and that expatriates are subjected to increasing scrutiny. Counsel asserts that the spouse has an established job as an accountant in the United States, but that a Muslim female in Pakistan is rarely given the opportunity for a career and that it is unlikely the applicant's spouse would find a job in Pakistan to support herself because of discrimination against women in the work force. Counsel also asserts medical treatment is unavailable or unaffordable in Pakistan, so the financial impact of living there would be life-threatening for the applicant's spouse and that country information shows a lack of adequate medical and mental health treatment.

The AAO finds the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Pakistan to reside with the applicant due to his inadmissibility. The applicant's spouse has lived in the United States for more than 20 years, becoming a U.S. citizen in 2004, and has strong family ties in the United States. She states that she fears that health care in Pakistan is substandard and inadequate and that mental health issues are largely ignored. She further states that she fears the violence and anti-Americanism in Pakistan in addition to discrimination against woman that could make it difficult for her to obtain employment. She also states that she fears women are a prime target of attacks by Islamic fundamentalists and that she does not follow traditional rules for women.

As such, the record reflects that the cumulative effect of the qualifying spouse's family ties and length of residence in the United States, her health and safety concerns, and loss of employment if she were to relocate, rises to the level of extreme. The AAO thus concludes that the applicant's qualifying spouse would suffer extreme hardship if she returned to Pakistan to reside with him.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse would face if the applicant is not granted this waiver, his long-time employment, and his support from members of his community in the United States. The unfavorable factors in this matter are the applicant's 1995 criminal conviction and a 1993 fraudulent asylum application.

Although the applicant's violations of the immigration laws are serious, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant.

(b)(6)

NON-PRECEDENT DECISION

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See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.