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



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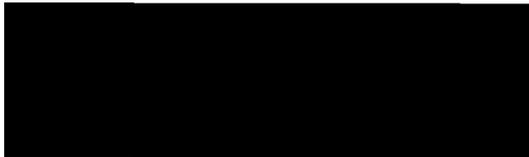


FILE: [REDACTED] Office: BANGKOK, THAILAND Date: NOV 01 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Tanig Syed
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his mother.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 14, 2008.

On appeal, the mother of the applicant states that she would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion*.

In support of the waiver the record includes, but is not limited to, statements from the applicant's family members; country conditions reports; and a psychological evaluation. The entire record was reviewed and considered in rendering this decision.

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

- (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.

The record reflects that the applicant was admitted to the United States on November 19, 2000 with a B-1/B-2 visa valid for six months. *Record of Sworn Statement*, dated February 7, 2004; *Form I-275, Withdrawal of Application for Admission/Consular Notification*, dated February 7, 2004. The applicant remained in the United States until February 20, 2002. *Record of Sworn Statement*, dated February 7, 2004. The applicant admitted to having a counterfeit stamp placed in his passport showing an entry into Pakistan on February 12, 2001. *Id.*; *Form I-275, Withdrawal of Application for Admission/Consular Notification*, dated February 7, 2004. On June 30, 2002 the applicant was again admitted into the United States on a B-1/B-2 visa valid for three months. *Record of Sworn Statement*, dated February 7, 2004. He overstayed his visa by 15 days. *Id.* On February 7, 2004 the applicant attempted to gain admission to the United States at New York, New York with his B-1/B-2 visa. *Id.* He was referred to secondary inspection as a possible immigrant not in possession of a valid immigrant visa. *Form I-275, Withdrawal of Application for Admission/Consular Notification*, dated February 7, 2004. His visa was subsequently cancelled and he was ordered removed from the United States. *Id.* Based on his presentation of a counterfeit Pakistan entry stamp at the port of entry which hid the fact that he overstayed his period of authorized stay granted on his November 19, 2000 admission, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act.

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

- (1) 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.

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. Hardship to the applicant or children can be considered only insofar as it results in hardship to a qualifying relative. 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme

hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

If the applicant’s mother joins the applicant in Pakistan, the applicant needs to establish that his mother will suffer extreme hardship. The applicant’s mother is a native of Pakistan. *Approved Form I-130, Petition for Alien Relative*. Her husband is deceased and she has ten children, all of whom, with the exception of the applicant, reside in the United States or Canada. *Statement from the applicant’s mother*, dated December 22, 2007. The applicant’s mother was born in 1938. *Approved Form I-130, Petition for Alien Relative*. She states that she is confined to a wheelchair and suffers from high blood pressure, osteoporosis, anxiety, depression, anemia, multiple fractures, diarrhea, kidney failure and strokes. *Statement from the applicant’s mother*, dated December 22, 2007. She notes that her leg fractures have required several major surgeries and she is unable to walk. *Id.* She also states that she is almost blind. *Id.* While the AAO acknowledges these statements, it notes that the only documentation regarding the physical health conditions of the applicant’s mother is a statement from the applicant’s daughter who is a physician. *Statement from* [REDACTED] *MSW, LCSW, CPFT, PsyD, JD*, dated November 1, 2007. The AAO further notes that this statement is presented within the psychological evaluation, is not on any type of physician’s letterhead, and is unsigned. *Id.* The record fails to include any type of documentation regarding any of the stated physical health conditions of the applicant’s mother from a physician independent of her daughter. The record fails to include any type of medical records, hospital notes, or medical prescriptions. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant’s sister states that these days, the conditions in Pakistan are unstable and violent. *Statement from* [REDACTED] dated March 10, 2010. The record includes published country conditions reports regarding Pakistan,

including a Travel Warning issued by the United States Department of State warning United States citizens of the dangers of traveling to Pakistan. *Travel Warning, Pakistan, United States Department of State*, dated January 7, 2010. The AAO further notes that the Travel Warning remains in effect, with the most recent warning issued on July 22, 2010. *Travel Warning, Pakistan, United States Department of State*, dated July 22, 2010. When looking at the aforementioned factors, particularly the lack of family ties of the applicant's mother in Pakistan, her elderly age, and the published country conditions on Pakistan which include a Travel Warning issued by the United States Department of State, the AAO finds that the applicant has demonstrated extreme hardship to his mother if she were to reside in Pakistan.

If the applicant's mother resides in the United States, the applicant needs to establish that his mother will suffer extreme hardship. As previously noted, the applicant's mother is a native of Pakistan. *Approved Form I-130, Petition for Alien Relative*. Her husband is deceased and she has ten children, all of whom, with the exception of the applicant, reside in the United States or Canada. *Statement from the applicant's mother*, dated December 22, 2007. The applicant's mother was born in 1938. *Approved Form I-130, Petition for Alien Relative*. She states that she is confined to a wheelchair and suffers from high blood pressure, osteoporosis, anxiety, depression, anemia, multiple fractures, diarrhea, kidney failure and strokes. *Statement from the applicant's mother*, dated December 22, 2007. She notes that her leg fractures have required several major surgeries and she is unable to walk. *Id.* She also states that she is almost blind. *Id.* While the AAO acknowledges these statements, it notes that the only documentation regarding the physical health conditions of the applicant's mother is a statement from the applicant's daughter who is a physician. *Statement from [REDACTED]*, MA, MSW, LCSW, CPFT, PsyD, JD, dated November 1, 2007. The AAO further notes that this statement is presented within the psychological evaluation, is not on any type of physician's letterhead, and is unsigned. *Id.* The record fails to include any type of documentation regarding any of the stated physical health conditions of the applicant's mother from a medical professional independent of her daughter. The record fails to include any type of medical records, hospital notes, or medical prescriptions. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant's mother states that although she lives with and has other children who are close to her, her other children have young children of their own and find it exceedingly difficult to take care of her full-time. *Statement from the applicant's mother*, dated December 22, 2007. The psychological evaluation also states that the applicant's mother lives with her daughter [REDACTED] in New York, and that [REDACTED] has four young children and a home for which to care. *Statement from [REDACTED]*, MA, MSW, LCSW, CPFT, PsyD, JD, dated November 1, 2007. The AAO notes that within the psychological evaluation, an unsigned statement from [REDACTED] is included. *Id.* In this statement, [REDACTED] makes no mention of having four young children and does not address any difficulties pertaining to the care of her mother. *Id.* Additionally, the record fails to include a signed statement from [REDACTED] independent of the psychological evaluation. Regarding the psychological health of the applicant's mother, the licensed healthcare professional states that based on the interview conducted, the applicant's mother's presentation is consistent with Major Depression and Anxiety Disorder, and that she would be devastated, overwhelmed, and lost without the applicant. *Id.* While the AAO acknowledges these statements, it notes that the licensed healthcare professional also stated that while the applicant's mother is generally alert, oriented, cooperative, and a good historian, almost all information was gathered through her children, [REDACTED] and [REDACTED]. *Id.* The AAO therefore questions

how much of the diagnosis of the psychological conditions of the applicant's mother was based on direct interviews as compared with interviews of her children. Although the input of any mental health professional is respected and valuable, the AAO also notes that the submitted letter fails to state how many interviews of the applicant's mother were conducted by the licensed healthcare professional or discuss the bases on which he reached his conclusions. Accordingly, the submitted evaluation does not reflect the insight and elaboration required in a psychological evaluation, thereby rendering the licensed healthcare professional's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant's sister states that the applicant's mother is worried about the applicant due to the unstable and violent conditions in Pakistan. *Statement from the applicant's sister*, dated March 10, 2010. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his mother if she were to reside in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if she remains in the United States, the applicant is not eligible for a waiver of his inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.