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



**U.S. Citizenship
and Immigration
Services**

hts

FILE:

Office: NEWARK, NJ

Date: **FEB 17 2011**

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 having sought a benefit under the Act through fraud or willful misrepresentation. He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. The Field Office Director also found that a favorable exercise of discretion was not warranted in the applicant's case. *Field Office Director's Decision*, dated November 25, 2009.

On appeal, counsel states that the Field Office Director erred in finding that the applicant had failed to establish extreme hardship to his spouse and further asserts that a balancing of the positive and negative factors in the applicant's case warrants a favorable exercise of discretion. *Form I-290B, Notice of Appeal or Motion*, dated December 10, 2009.

The record of proceeding contains, but is not limited to, the following evidence: counsels' briefs; statements from the applicant's spouse and her daughter; an affidavit sworn by the applicant; a psychological evaluation of the applicant's spouse; a statement concerning the applicant's spouse's mental health; country conditions materials for Pakistan; evidence relating to the applicant's spouse's education and training; a tax return for the applicant's spouse; W-2s for the applicant's spouse; an employment memorandum and earnings statements for the applicant's spouse; financial documentation, including bank statements and bills; and support letters from friends of the applicant. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **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 chapter is inadmissible.

The record reflects that the applicant entered the United States on January 15, 2001 using a photo-substituted South African passport and U.S. nonimmigrant visa. Accordingly, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having obtained admission to the United States through fraud or the willful misrepresentation of a material fact.

Section 212(i) of the Act provides that:

- (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 an applicant or other family members 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 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 (BIA) 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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) [REDACTED] 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.

The AAO now turns to the question of whether the applicant in the present case has established that his U.S. citizen spouse would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that the applicant’s spouse could not relocate to Pakistan with the applicant because her ties to Pakistan are nonexistent. Counsel contends that the applicant’s spouse’s family ties are entirely in the United States and that she would have to abandon her livelihood, family and culture if she relocated. He notes that the applicant’s spouse who is a licensed clinical social worker would be unable to obtain comparable employment in Pakistan. He further asserts that she would be at risk from the “very real and very clear dangers for Americans traveling to Pakistan.”

In a January 2, 2008 affidavit, the applicant's spouse notes the recent assassination of former [REDACTED] and states that conditions in Pakistan are terrifying. More recently in 2010 interviews with licensed clinical social worker [REDACTED] the applicant's spouse stated that she has never been to Pakistan and does not know how she would live there as she is not a Muslim. The applicant's spouse also indicated to [REDACTED] that she does not speak Urdu or Punjabi.

The applicant's spouse further informed [REDACTED] that she is concerned that, if she moved to Pakistan, her adult children would be unable to manage in her absence. In her interviews with [REDACTED] she stated that her son has had his spleen removed as a result of a police beating and has heart palpitations and that her daughter requires back surgery as a result of being hit by a car. The applicant's spouse also indicated that both of her children had been diagnosed with Attention Deficit/Hyperactivity Disorder in the past. She further stated that her children are financially dependent on her and that her ex-husband, their father, is not in a position to help them. The applicant's spouse also reported to [REDACTED] that she would be worried about leaving her mother who has had lung cancer and that, even though she has siblings in the United States, both her divorced elderly parents have largely depended on her for assistance because she is the oldest of their children.

The AAO notes that [REDACTED] evaluation also reports that the applicant's spouse is experiencing shortness of breath, a rapid heartbeat, nausea, vomiting on a weekly basis, insomnia, pacing at night, profuse sweating, bouts of dizziness, eye irritation, the twitching of an eyelid and increased irritability. She further indicates that the applicant's spouse has been hospitalized in the past for mitral valve prolapse and has been treated on an emergency basis for an irregular heartbeat. [REDACTED] also claims that the applicant's spouse suffers from asthma and uses an inhaler, as well as sciatica, which prevents her from walking when she has an attack. She notes that the applicant's spouse has been seen by a specialist in New York because of problems with severe, frequent headaches and bloodshot eyes from a ruptured blood vessel. The applicant's spouse, [REDACTED] states, has a limited range of motion in her right arm because of a childhood injury. She concludes, therefore, that the more limited access to medical care in Pakistan and the applicant's spouse's lack of health insurance would be critical issues for her upon relocation.

The AAO notes that [REDACTED] indicates that the applicant's spouse would suffer as a result of leaving behind children who cannot function on their own and parents who depend on her as she is the only one of their children they have in common. The record, however, does not support these claims or the similar assertions made by the applicant's spouse. No documentary evidence demonstrates that the applicant's spouse's adult children or parents are in any way dependent on her. There is no medical evidence that either of her children suffer from any medical problems or that they require her financial assistance. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in 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)). We also find no evidence in the record to demonstrate that the applicant's spouse's

half-siblings would be unwilling or unable to provide whatever assistance their parents might require in her absence.

The record also fails to establish that relocating to Pakistan would negatively affect the applicant's physical health. No documentation, e.g., medical records or statements, demonstrate that the applicant's spouse suffers from any of the medical problems or conditions identified in [REDACTED] evaluation. *Id.*

However, the record does include a range of reports that support the claims made concerning conditions in Pakistan, including the section on Pakistan from the CIA's World FactBook, updated as of December 13, 2007; the May 2007 Background Note on Pakistan, issued by the U.S. Department of State; the section on Pakistan from Country Reports on Human Rights Practices – 2006, issued by the Department of State on March 6, 2007; and a Department of State travel warning for Pakistan, dated September 21, 2007. The AAO notes that the Department of State continues to warn U.S. citizens against travel to Pakistan and, as of February 2, 2011, updated its travel warning, noting both ongoing security concerns and the increase in religious intolerance during 2010.

The AAO acknowledges the impacts on the applicant's spouse of relocating to a country where she has no cultural or family ties; does not speak Urdu, the national language; and where country conditions indicate a potential risk to her safety. When these specific hardship factors and those normally created by relocation, including the applicant's spouse's separation from her U.S. family and the loss of her employment, are considered in the aggregate, we find that the applicant has established that his spouse would experience extreme hardship upon relocation to Pakistan.

We now turn to a consideration of the evidence of record and the extent to which it may also establish that the applicant's spouse would experience extreme hardship if she remains in the United States.

On appeal, counsel states that the applicant's spouse would suffer emotionally, financially and mentally if the applicant is removed. He asserts that it would be extremely difficult for the applicant and his spouse to maintain their marriage if the applicant is removed to Pakistan as they would be unable to maintain their sexual relationship. Counsel further notes that the applicant's spouse would experience financial hardship as the applicant would no longer be contributing to the household's finances and she would have the additional expenses that would be created by attempting to maintain a long-distance relationship. Counsel states that "[i]t would become extremely expensive and burdensome for her to manage her household, pay for airplane tickets, take time from work, maintain communication and assist her husband until he [found] employment on her salary."

In her January 2, 2008 affidavit, the applicant's states that her life is in the United States and that she needs the applicant by her side. She asserts that he provides her with support and "brings balance to [her] life." In her interviews with [REDACTED] the applicant's spouse also reported that as a result of the stress created by the applicant's immigration problems, she is having trouble concentrating and that she needs a good memory to be a social worker. She also stated that she is always tired and

has cancelled client appointments because she lacked the energy to go into her office. The applicant's spouse further claimed that her body aches, that her hair is falling out, that her skin is breaking out and that her legs shake. She also indicated to [REDACTED] that she has been diagnosed with Temporomandibular Joint Dysfunction and that she wakes up with numbness in both arms. The evaluation also reports that the applicant has a number of health problems, including a recent diagnosis of hepatitis A and B.

In support of the claims of emotional and financial hardship, the applicant has submitted the psychological evaluation of the applicant's spouse prepared by [REDACTED] which is based on three interviews conducted via Skype on March 24, March 31 and April 7, 2010. The record also contains a July 12, 2010 statement from [REDACTED] a child and adolescent psychiatrist, who states that he has treated the applicant's spouse since June 14, 2010 on a biweekly basis. The record further includes an employment memorandum for the applicant's spouse, her 2006 W-2 form and tax return, several of her earnings statements from 2007 and a range of documents establishing that she holds a master's degree in social work and is a licensed clinical social worker in New Jersey. The record also documents that the applicant's spouse has received additional training on a range of mental health issues.

Based on her interviews of the applicant's spouse, [REDACTED] finds her to be suffering from Generalized Anxiety Disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). [REDACTED] evaluation concludes that if the applicant and his spouse are separated, the applicant's spouse's anxiety will affect her ability to run her private practice and that her daily functioning will decrease drastically or she will become nonfunctioning. She predicts that psychiatric hospitalization is a likely outcome for the applicant's spouse. [REDACTED] also finds that the applicant's removal will cause harm to his spouse's children and that any harm to her children would affect the applicant's spouse.

Although the input of any mental health professional is respected and valuable, the AAO notes that the three interviews on which the submitted evaluation is based were conducted during a two-week period, March 24 to April 7, 2010, via the Internet using Skype technology. The AAO finds this limited contact between a mental health professional and a patient who is unknown to the mental health professional to be of limited evidentiary value to a determination of extreme hardship.

The July 12, 2010 statement from [REDACTED] also fails to establish the exact nature of the emotional hardship that would be suffered by the applicant's spouse in his absence. In his one-page statement, [REDACTED] indicates that he saw and evaluated the applicant's spouse for depression, adjustment disorder and family hardship on June 14, 2010. He does not, however, report his findings or offer a medical diagnosis of the applicant's spouse's mental/emotional state. Instead, [REDACTED] briefly reports the history given him by the applicant's spouse, indicates that he is treating her with unidentified medication and biweekly therapy sessions, and states that the resolution of her family hardship will result in her full recovery. In that it lacks a detailed analysis of the applicant's spouse's mental state as well as a diagnosis that indicates the type and severity of the emotional

hardship she is experiencing, [REDACTED] statement is insufficient proof that separation from the applicant would result in significant mental/emotional hardship for his spouse.

The AAO also notes that the record fails to establish that the applicant's spouse would suffer financial hardship in his absence, as claimed by counsel. Although it contains proof of the applicant's spouse income, it fails to document her financial obligations in the applicant's absence or that the applicant currently contributes to the family's household finances. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.*

The record contains an undated employment memorandum from [REDACTED] that indicates the applicant's spouse was reappointed as a part-time counselor/social worker on June 7, 2007 at a rate of \$37/hour for less than 26.5 hours per week. An earnings statement prepared by Somerset County for the period ending December 31, 2007 reports the applicant's part-time income as totaling \$37,052.50. Although, the record does not document what other income the applicant's spouse may have earned from other employment in 2007, we do find the record to provide that information for 2006 when the applicant earned a total of \$20,961 from her part-time employment with Somerset County and reported an income of \$60,933 on her 2006 federal tax return. The AAO notes that the applicant's spouse's income in 2006 was more than six times higher than the federal poverty guideline of \$9,800 for a family of one. Accordingly, in the absence of any proof of her financial obligations, the AAO is unable to conclude that she would experience any financial hardship in the applicant's absence, even with the additional expenses that counsel asserts would result if the applicant is returned to Pakistan.

Based on the record before it, the AAO does not find the applicant to have established that his spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

The applicant has demonstrated that his spouse would experience extreme hardship upon relocation. However, his failure to prove that she would also suffer extreme hardship upon remaining in the United States prevents him from establishing eligibility for a waiver of 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 an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval 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 will be dismissed.