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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: JUL 01 2011 Office: BANGKOK, THAILAND FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B), 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:

[redacted]

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand. 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 to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime involving moral turpitude, section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission through fraud or willful misrepresentation of a material fact, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant's spouse and two children are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to his spouse and the application was denied accordingly. *Decision of the District Director*, dated September 23, 2008.

On appeal, counsel states that the district director improperly minimized the claimed hardships and details the hardship that the applicant's spouse would experience if the applicant is inadmissible to the United States. *Form I-290B*, dated October 19, 2008.

The record includes, but is not limited to, counsel's letter, medical records for the applicant's spouse, the applicant's spouse's statements, the applicant's statements, letters of support, psychological evaluations of the applicant's spouse and country conditions information on Pakistan. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant attempted to procure admission to the United States on September 18, 1992 by presenting a photo-substituted passport. Based on this misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, which 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:

> (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.

The record also reflects that the applicant was ordered excluded *in absentia* on February 23, 1993; he filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on March 20, 1997; the underlying Form I-130, Petition for Alien Relative, was found to be null and void on November 18, 1997; the Form I-485 was denied on November 18, 1997; he filed a second Form I-485 on April 30, 2001; and he was removed on April 29, 2003. The applicant accrued unlawful presence from November 18, 1997, the date on which his first Form I-485 was denied, until April 30, 2001, the date on which his second Form I-485 was filed. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his April 29, 2003 departure from the United States.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is

> established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The district director found that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude by violating a protective order in 1997. The record reflects that the applicant was convicted of violating a protective order under Virginia Statutes § 16.1-253.2 on February 27, 1998. The AAO notes that this is the applicant's only conviction. The AAO will not address whether this is a crime involving moral turpitude. However, even assuming it is considered a crime involving moral turpitude, the applicant would be eligible for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act as the maximum penalty for the crime is one year and he did not receive a sentence of more than six months. As such, he is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

> (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-
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> . . . .
>
> (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).

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act and 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 his 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-Moralez*, 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. *See Salcido-Salcido*, 138 F.3d at 1293 (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.

The applicant's spouse states that the applicant lives in a small town in Pakistan; he does not have a job or means of income; and he does not have a house or the basic necessities of life. *Applicant's Spouse's First Statement*, undated. The applicant's spouse states that the U.S. Department of State continues to warn U.S. citizens of non-essential travel to Pakistan; there are suicide bombings, kidnappings and threats directed at U.S. nationals and it would not be wise to put her children in this situation; and the applicant lives with his parents and siblings. *Applicant's Spouse's Second Statement*, dated October 20, 2008. The AAO notes the February 2, 2011 U.S. Department of State Travel Warning for Pakistan which details the security issues there. The travel warning states that terrorist groups continue to seek opportunities to attack locations where U.S. citizens congregate or visit, U.S. citizens have been victims of attacks in the past few years and reports of religious intolerance rose in 2010. *U.S. Department of State Travel Warning for Pakistan*, dated February 2, 2011. The record also includes country conditions documentation reflecting general issues in Pakistan. These issues include numerous and persistent human rights abuses and suicide bombings.

The applicant's spouse states that she has unbearable back pain. *Applicant's Spouse's Statement*. The record contains a Neuropsychological Evaluation of the applicant's spouse prepared by [redacted] and dated June 25, 2008. The evaluation states that the applicant's spouse is taking medication for pain-related issues, headaches and anxiety. In addition the evaluation diagnoses the applicant's spouse with adjustment disorder with depressed mood and expresses concern regarding the ability of the applicant's spouse to "provide competent, independent parenting to her children." The record also contains a psychological evaluation of the applicant's spouse prepared by [redacted] and dated February 26, 2007. The evaluation states that the applicant's spouse is suffering from moderate clinical depression, intense anxiety, and agitation. In addition, the record reflects that the applicant's spouse has been treated for recurrent migraine headaches, irritable bowel syndrome and lumbar spine disc disease. *Letter from* [redacted], dated October 6, 2007.

Counsel states that the applicant was the sole supporter of his family based on his employment as a limousine driver. *Form I-290B*. Counsel states that the applicant's spouse and children have been deprived of the financial and emotional support of the applicant; and the applicant's spouse suffers from financial distress and mental and physical disabilities exacerbated by the loss of the applicant. *Counsel's Letter*, dated October 19, 2008. The applicant spouse makes similar claims. *Applicant's Spouse's First Statement*. The record includes evidence that the applicant worked for a limousine company and has an offer of employment upon return to the United States. The psychologist states that the applicant's spouse has never held a job and she lives with her children in her brother's basement. *Neuropsychological Evaluation*. The applicant's spouse's friend states that the applicant's spouse's health has been deteriorating; she has migraine headaches and fevers on a regular basis; she cares for her mother who has several medical issues; and it has been draining for her to be a single parent raising two children. *Letter from* [redacted] undated. The record

includes older medical records reflecting that the applicant's spouse has had vascular and tension type headaches and her older child has had emotional difficulties since the applicant's removal.

The applicant's spouse states that her mental and physical conditions continue to deteriorate due to separation from the applicant; at times she becomes lost and confused; her children are suffering as can be seen in their appearance, habits and physical appearance; her children do not sleep or eat properly and are always anxious; and she is not able to give her children the necessary time and attention due to her physical and psychological problems. *Applicant's Spouse's Statement*. The psychologist states that diagnostic considerations for the applicant's spouse include adjustment disorder with depressed mood.

Considering the unique combination of hardship factors, which include country conditions in Pakistan, the living conditions of the applicant in Pakistan, the applicant's spouse's medical and emotional issues, the applicant's spouse's difficulties in raising her children without the applicant's assistance and the financial issues, the AAO finds that applicant's spouse would suffer extreme hardship either on relocation to Pakistan or if she were to remain in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's unlawful presence and unauthorized period of stay, criminal conviction, exclusion order, misrepresentation, failure to appear for his exclusion hearing and unauthorized employment.

The favorable factors include the presence of the applicant's U.S. citizen spouse and children, extreme hardship to his spouse, reporting for the Special Registration Program, the lack of a criminal record since 1998 and letters reflecting good moral character.

The AAO finds that the violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that 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. The application is approved.