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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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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.

Thank you,


for
Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Afghanistan 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 entering the United States in January of 1993 using another person's passport. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his family.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated November 7, 2007. Thereafter, on December 2, 2008, the applicant was notified that his Application for Asylum (Form I-589) was approved.

The applicant's attorney submitted an appeal brief in support of the applicant's waiver application. In the brief, the applicant's attorney contends that the qualifying spouse will encounter financial and emotional hardships if the applicant is not able to remain in the United States. Further, the applicant's attorney indicates that the qualifying spouse was granted asylum in the United States because of her fear of returning to Afghanistan, and that she and her children would face safety issues if they were to relocate to Afghanistan.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief from the applicant's attorney, the qualifying spouse's naturalization certificate, a marriage certificate, birth certificates for the applicant and qualifying spouse's United States citizen children, declarations from the qualifying relative and the applicant, documents regarding the applicant's business and other financial documentation, country condition materials, an approved Petition for Alien Relative (Form I-130), a letter notifying the applicant that his Form I-589 was approved and documentation submitted with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 wife 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. *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 qualifying relative is his United States citizen wife. The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601, Form I-290B, an appeal brief from the applicant’s attorney, birth certificates for the applicant and qualifying spouse’s United States citizen children, declarations from the qualifying relative and the applicant, documents regarding the applicant’s business and other financial documentation, country condition materials and documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant’s attorney contends that the qualifying spouse will encounter financial and emotional hardships if the applicant is not able to remain in the United States. Further, the applicant’s attorney indicates that the qualifying spouse was granted asylum in the United States because of her fear of returning to Afghanistan, and that she and her children would face safety issues if they were to relocate to Afghanistan.

The AAO finds that the applicant has established that his qualifying spouse would suffer extreme hardship as a consequence of being separated from him. The record contains a declaration from the qualifying spouse detailing the emotional hardships that she would suffer as a result of her separation from the applicant. In her declaration, the qualifying spouse states that she relies on the applicant for “everything – financially, socially and emotionally.” Further, she explains that she was tortured in her country of origin, Afghanistan, and as a result of her experiences there, she was granted asylum in the United States. Based on her own persecution in Afghanistan, she fears

for her husband's safety if he had to return to Afghanistan¹ and she asserts that she "could not live everyday knowing that [the applicant] could be killed at any time." Further, she finds herself in "deep depression anytime [she] think[s] about him living in that country." The qualifying spouse lastly states that she cannot "endure any more suffering in [her] life and [does] not know if she can go on without [the applicant]."

With respect to the financial hardships, the applicant's attorney asserts that the applicant is the sole financial provider for the family. Further, the applicant's attorney indicates that the applicant owns two businesses and that the qualifying spouse has never worked outside the home due to her limited English. He further states that applicant and qualifying spouse have three children that the applicant financially supports. The record supports these assertions through declarations from the applicant and the qualifying spouse, and financial documentation including tax returns. The record also contains documentation of the applicant and qualifying spouse's expenses that demonstrate the necessity of the applicant's financial contributions to the family. As such, the documentation provided regarding the qualifying spouse's emotional and financial hardships sufficiently demonstrate that the qualifying spouse would suffer extreme hardship if she were to remain in the United States without the applicant.

The AAO also finds that the qualifying spouse would suffer extreme hardship in the event that she relocates to Afghanistan. As the qualifying spouse was granted asylum in the United States, she has already demonstrated that she has a well-founded fear of returning to Afghanistan. Further, the record contains country condition materials supporting the assertions of the applicant's attorney that she would encounter safety concerns and other problems in Afghanistan. Moreover, the applicant submitted a Department of State travel warning for United States citizens traveling to Afghanistan. The travel warning specifically indicates that United States citizens are facing ongoing threats of kidnappings and assassinations, as well as terrorist attacks. As such, the applicant has supported the claims that the qualifying spouse's relocation to Afghanistan would poses safety concerns for her. Moreover, the applicant's qualifying spouse has lived in the United States for fifteen years and has three United States citizen children. Therefore, the qualifying spouse would suffer extreme hardship in the event that she relocates to Afghanistan due to the dangerous conditions there and her ties to the United States.

Considered in the aggregate, the applicant has established that his wife would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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.

¹ As aforementioned, the AAO notes that the applicant was also granted asylum on December 2, 2008.

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 section 212(i) 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 extreme hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, his support from the qualifying spouse and his financial contributions to his family. The unfavorable factors in this matter are the applicant's use of another person's passport.

Although the applicant's violations of immigration law cannot be condoned, these violations occurred nearly twenty years ago, and the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *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.

ORDER: The appeal is sustained.