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



U.S. Citizenship
and Immigration
Services



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Date: **JUN 03 2011** Office: PHILADELPHIA, PA

FILE:

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 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, Philadelphia, Pennsylvania, 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 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), as an alien who has sought to procure a visa, other documentation, or admission to the United State through fraud or misrepresentation. The applicant is married to a lawful permanent resident, and applied for lawful permanent residence as a derivative of his wife, who obtained her status through employment. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act in order to reside in the United States with his wife.

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, his lawful permanent resident spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on or about October 31, 2008.

On appeal, counsel for the applicant contends that the Field Office Director made errors of fact and law, and that the record establishes that the applicant's spouse will experience extreme hardship. *Form I-290B, Notice of Appeal*, dated November 25, 2008.

The record contains, but is not limited to, the following evidence: a brief from counsel; a letter from the applicant's spouse; country conditions materials; a statement from the applicant; copies of marital records relating to the previous marriage of the applicant; photographs of the applicant and his spouse; an employment letter for the applicant's spouse; educational record for the applicant; educational records for the applicant's spouse; court records acknowledging a name change for the applicant; a statement from the pastor of the applicant's church; a statement from [REDACTED] regarding the applicant; medical records of the applicant's spouse regarding fertility treatments; a 2006 Department of State International Religious Freedom Report, published by the Bureau of Democracy, Human Rights, and Labor; and newspaper articles on religious conflict in Pakistan.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 married his first spouse on January 5, 2001. *Statement of the Applicant's First Spouse*, dated May 14, 2006. The applicant's first spouse filed a Petition for Alien Relative on behalf of the applicant and an interview was conducted. The applicant and his prior

spouse then filed a Form I-751, Petition to Remove Conditions on Residence, and were interviewed in relation to that application on February 9, 2005.

At their immigrant interview the adjudication officer noted numerous material inconsistencies between the testimony of the applicant and his spouse at that time. The adjudication officer concluded that the applicant was ineligible for an immigrant visa for having entered into a marriage for immigration purposes. Three months later, on May 12, 2005, the applicant and his first wife divorced. The applicant married his second wife on April 9, 2006. On August 9, 2006, the applicant filed a Form I-485 to adjust his status as a derivative of his second spouse. On October 31, 2008, the applicant's Form I-485 was denied under section 212(a)(6)(C)(i) of the Act for entering into a sham marriage with his first spouse for immigration purposes. The applicant filed this Form I-601 waiver application which the Field Office Director denied on October 31, 2008.

An examination of the evidence in the record indicates that, more likely than not, the applicant entered into his first marriage for the purposes of obtaining an immigration benefit. The interview notes from their February 9, 2005, reveals serious inconsistencies in the testimony of the applicant and his spouse at that time. In addition, the AAO notes that both the applicant's and his first spouse's testimony has changed with regard to his residences and the facts surrounding his first marriage. *Compare* G-325 Biographical Questionnaire of [REDACTED], filed on or about January 6, 2001, with G-325 Biographical Questionnaire of [REDACTED] filed on or about August 7, 2006 (containing inconsistent dates of residence and parental information). Based on these findings the AAO concludes the applicant entered into his first marriage and misrepresented the status of that relationship to the adjudication officer on February 9, 2005, in order to procure an immigration benefit. Therefore, 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 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’s qualifying relative, 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 will first consider hardship upon relocation. Counsel asserts that the applicant’s spouse would experience religious intolerance and discrimination due to the fact that she is a practicing Catholic. *Brief in Support of Appeal*, February 5, 2009. He asserts that the applicant’s wife and the applicant would lose their careers, not have access to health or education facilities, and would be unable to seek treatment for fertility issues. He states that the applicant’s wife would fear for her and the applicant’s safety, and that she would only be able to practice her religion under the extreme restrictions placed on her by the Pakistani government. Counsel also asserts that the applicant has been diagnosed with hypothyroidism and that treatment and medications for this condition are not readily available in Pakistan, adding to the psychological impact on the applicant’s spouse. Counsel also asserts that the applicant has no family in Pakistan, and that being removed there will separate him from his family members in North America. The AAO notes that hardship to an applicant is relevant to a determination of extreme hardship in this proceeding hardship only to the extent that it affects the qualifying relative.

The applicant’s spouse and the applicant have each submitted statements discussing the impacts noted by counsel. The applicant’s spouse states that she would be afraid to live in Pakistan, or to have children there because of her religion. *Statement of the Applicant’s Spouse*, dated March 4, 2008.

Although the record contains country conditions materials which discuss general conditions in Pakistan, cited by counsel, these materials do not support counsel’s characterization of the environment in Pakistan. Nor do the country conditions materials establish that the applicant and his spouse in particular would be a victim of religious crime or unable to practice their religion. Contrary to counsel’s depiction of government restrictions in Pakistan, the AAO notes that the State Department Report on Religious Freedom, submitted by counsel, states:

There was no law against apostasy . . . there are no legal requirements for an individual to practice or affiliate nominally with a religion. The Government did not penalize or legally discriminate against those not affiliated with any religion The Government did not prohibit, restrict or punish parents for raising children in accordance with religious teachings and practices of their choice, nor did it take steps to prevent parents from teaching their children religion in the privacy of the home. . . .

Counsel has submitted a number of articles describing individual incidences of violence against those perceived to have blasphemed Islam. These articles do not establish that such incidents are prevalent in Pakistan. Further, despite counsel's characterization of the applicant as a potential victim based on his religious affiliation and name change, the AAO would note that the applicant has not converted to Catholicism. *Statement of the Applicant*, February 28, 2008. Based on the materials submitted the AAO can accept that there may be societal pressure against apostasy in Pakistan, but there is no evidence that the applicant or his spouse would be specifically targeted based on their religion or lack thereof, or based on the fact that the applicant has changed his name. Nor is there sufficient evidence to indicate that the applicant's spouse would not be allowed to practice her religion or raise her children in a manner she sees fit.

The record does not support that relocating to Pakistan would result in hardships to the applicant's spouse that are significantly greater than what are commonly experienced by the relatives of other inadmissible aliens who relocate abroad with family members. Nonetheless, the AAO will give due consideration to the religious and political environment in assessing hardship to the applicant's spouse.

Counsel asserts that employment opportunities are non-existent in Pakistan. As with other assertions above, counsel's characterizations are not supported by evidence in the record. The record does not contain any evidence which is sufficiently probative to establish that the applicant would be unable to find employment or shelter. General economic or political conditions in an applicant's native country will not establish extreme hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985). The AAO notes that the applicant is from Pakistan and is educated. There is insufficient evidence to establish that the applicant and his spouse would be unable to find employment or procure housing.

The record also lacks any evidence that Pakistan does not have adequate medical facilities or fertility treatment services, as asserted by counsel. The record does not contain evidence that the applicant's hypothyroidism is a serious condition, nor is there anything which indicates that the applicant would be unable to receive treatment for such a condition or have access to treatment in Pakistan. The country conditions materials in the record do not establish that the applicant and his spouse would be unable to continue their education or find employment and are not sufficient to demonstrate counsel's assertions of the impacts on the applicant's spouse upon relocation.

When the hardship factors upon relocation are considered in aggregate, it is evident that the applicant's spouse would experience some hardship upon relocation, but the record fails to establish that this hardship would rise to the level of extreme hardship. Counsel's assertions, relying largely on characterization of the social and religious environment in Pakistan, are not sufficiently supported by evidence in the record and do not appear to be justified based on the facts of this case.

With regard to hardship upon separation, counsel asserts that the applicant's spouse would experience emotional hardship due to permanent separation from the applicant. *Brief in Support of Appeal*, February 5, 2009. Counsel also asserts that she would experience hardship because forcing her to live without her husband would violate her deeply held religious beliefs and would be tantamount to "de facto" divorce. Counsel asserts that the applicant's spouse will live in constant fear that her husband will be harmed or killed. Counsel further asserts that the applicant's spouse would not be able to continue her education and would endure financial detriment if the applicant were removed.

Both the applicant and his spouse have submitted statements which form the basis of counsel's assertions.

The record includes educational records for the applicant and his spouse, indicating that they have each attended college in the United States. In addition, there are employment letters for the applicant and his spouse corroborating counsel's assertions with regard to their employment.

A number of counsel's assertions have been addressed above. Namely, despite characterizations by counsel that the applicant would be subjected to persecution based on his religious practices or affiliation, there is no evidence that he has converted to Catholicism, no evidence that he would be specifically targeted and insufficient evidence to establish that he would be subject to persecution based on having spent time in the United States. While the AAO does not discount the perceptions of the applicant's spouse with regard to the dangers faced by the applicant, in this case they do not appear to be supported by documentation on conditions in Pakistan. There is no evidence that the applicant would be unable to receive treatment or medication for hypothyroidism, and insufficient evidence that he would be unable to find employment or shelter, or continue his education. Based on these observations the AAO does not find that the applicant's spouse's concern for dangers faced by the applicant to be justified based on the evidence in the record. The applicant has not shown that his spouse would be subject to uncommon psychological hardship above what is normally experienced by the relatives of inadmissible aliens who remain in the United States.

With regard to financial hardship, the AAO notes that the record does not contain an accounting of the applicant's spouse's monthly financial obligations or specific detail regarding what impact she will experience based on the applicant's absence. It is not clear what income he presently provides or how his departure will specifically impact her financial situation. With regard to continuing her education and building the life they had dreamed of in the United States, the AAO notes that an inability to continue college education is not considered a significant hardship factor. *See generally Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994)(stating "the extreme hardship requirement . . . was

not enacted to insure that the family members of excludable aliens fulfill their dreams or continue their lives which they currently enjoy.)

While the AAO recognizes that the applicant's spouse has religious beliefs, there is no indication that the resulting impact on her upon separation is greater than what is commonly experienced by the relatives of inadmissible aliens who remain in the United States. Even when these hardship factors are considered in aggregate, they fail to establish that the applicant's spouse will experience hardship rising to the level of extreme.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.