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

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U.S. Citizenship
and Immigration
Services

[Redacted]

H5

DATE: **MAY 09 2011** OFFICE: CHICAGO, IL

FILE: [Redacted]

IN RE: [Redacted]

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:

[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,

Michael Shumway
for Perry Rhew
Chief, Administrative Appeals Office

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

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 and the father of a U.S. citizen. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain 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. *Field Office Director's Decision*, dated January 12, 2010.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship if he is removed from the United States and submits additional evidence in support of this claim. *Form I-290B, Notice of Appeal or Motion*, dated February 9, 2010.

The record of proceeding includes, but is not limited to, the following evidence: counsel's brief; statements from the applicant, his spouse, his father-in-law and his mother-in-law; country conditions information concerning Pakistan and the Ismaili community in Pakistan; psychological evaluations relating to the applicant's spouse; documentation of the applicant's spouse's enrollment in college; documentation relating to the applicant's and his spouse's financial obligations; earnings statements for the applicant and his spouse; bank statements; W-2 forms and tax returns for the applicant and his spouse; and affidavits of support 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 on July 31, 2001, the U.S. Embassy in Islamabad issued the applicant an F-1 nonimmigrant student visa based on a Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status – For Academic and Language Students, which was subsequently found to be fraudulent. The applicant used the F-1 visa to enter the United States on August 19, 2001 and began working in October 2001, as indicated on the applicant's Form G-325A, Biographic Information, dated February 1, 2007.

On appeal, the applicant asserts that his father paid an agent in Pakistan \$10,000 to assist him in obtaining a student visa to the United States and that he believed his F-1 visa and the underlying Form I-20 to be "true and real." He further states that, at the time of his F-1 admission, it was his intention to study computer programming at the University of Arizona. He claims that his plans changed when he was abandoned in Chicago by the agent who was responsible for arranging his transportation to Arizona and then learned of a health emergency in his family. His family's desperate need for money, the applicant states, led him to postpone his educational plans and to seek employment in order to provide them with financial assistance.

The AAO notes the applicant's claims that he relied on an agent hired by his father to obtain his student visa and that he believed the fraudulent Form I-20 on which his visa was based to be real. However, the fact that the applicant's student visa may have been arranged by another individual does not itself relieve him of responsibility for submitting the fraudulent Form I-20. The issue is whether the applicant was a willing participant in the fraud scheme related to his student visa. The applicant signed the Form I-20. Based on the entire record, including the evidence of the applicant's violation of his visa status once in the United States, we determine that the applicant willfully misrepresented a material fact to obtain a benefit under the Act. Accordingly, he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having obtained an immigration benefit through fraud or willful misrepresentation, and must seek a section 212(i) waiver.

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 the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 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) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

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

consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

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

On appeal, counsel states that relocation to Pakistan would result in extreme hardship for the applicant's spouse, her son and her family. He asserts that the applicant's spouse is terrified at the thought of returning to Pakistan as a result of the violence that existed at the time she lived in Pakistan and that continues today. He also notes that the applicant's spouse was previously the victim of the type of harassment that women in Pakistani society commonly experience and that she is afraid she will again be subjected to such behavior if she returns. Counsel further asserts that the applicant's spouse does not want to take her young son to a country where the lack of proper medical care previously caused the death of one of her siblings. He also states that the applicant's spouse is an Ismaili Muslim, a Muslim sect that has been the target of prejudice and violence in Pakistan. If the family returns to Pakistan, counsel contends, the fact that they come from the United States and are also Ismailis will subject them to potential violence.

In a February 4, 2010 affidavit, the applicant's spouse states that she cannot imagine returning to Pakistan as it is a dangerous, horrible country that gives her nightmares. When she lived in Pakistan, the applicant's spouse states, she lived in fear. She asserts that she often could not go to school because of the bombings and was constantly harassed and touched by strangers. The applicant's spouse claims that returning to Pakistan would be the end of "all possible opportunities for [her] family." She contends that if she and the applicant returned to Pakistan, her son would not be able to obtain a proper education or medical care, and that she and the applicant would not be able to work and provide for their family. To get a proper job, the applicant's spouse states, an individual must know the right people or be able to bribe the right people, and neither she nor the applicant have the appropriate contacts. She also asserts that she is an Ismaili Muslim, that Ismailis are being targeted in Pakistan, and that she fears she and her family would not be able to practice their religion or would risk attack if they attempted to do so.

In a February 2, 2010 affidavit, the applicant's spouse's mother states that her daughter would have an extremely difficult time if she returns to Pakistan because she is used to independence as a result of having lived in the United States since 2001. The applicant's spouse's mother states that life is hard for women in Pakistan as they are not treated fairly and that her daughter would not be able to adjust. In a second February 2, 2010 affidavit, the applicant's spouse's father reports that his daughter has become very Westernized and that he fears for her if she returns to Pakistan

In support of the preceding claims, the applicant has submitted an online article published by *USA Today* on Pakistan's declining economy; a 2009 online report from the Pakistan Red Crescent Society on the health status of the Pakistani population; June 8, 2009 and September 11, 2009 online articles from *Dawn* and *OneWorld SouthAsia* on Pakistan's overburdened healthcare system; a January 11, 2010 online article on the increasing violence in Pakistan published by the *Telegraph*, and 2005 and 2009 articles from *AsiaTimes* and *Dardistan Times* on the problems faced by Ismaili Muslims in Pakistan. Also included in the record is a travel warning for Pakistan issued by the Department of State on June 12, 2009.

The AAO has considered the applicant's spouse's assertions that she and the applicant would not be able to obtain employment in Pakistan to support their family and that her son would not be able to obtain medical care. We do not, however, find the submitted articles on the Pakistani economy and healthcare system to offer sufficient proof in support of these claims. General economic or country conditions in an alien's native country do 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 has, however, taken note of the 2009 travel warning submitted by the applicant, which advises U.S. citizens against travel to Pakistan based on ongoing security concerns. We observe that the Department of State has continued to update its travel warning for Pakistan, most recently on February 2, 2011. The latest warning cites "[t]he presence of Al-Qaida, Taliban elements, and indigenous militant sectarian groups [as posing] a potential danger to U.S. citizens throughout Pakistan." We further find the evidence of record to demonstrate that Ismaili Muslims in Pakistan have been and continue to be the targets of violence based on their religious practices. When these specific hardship factors and the difficulties and disruptions normally created by relocation to another country are considered in the aggregate, the AAO finds the applicant to have established that his spouse would experience extreme hardship if she returns to Pakistan with him.

On appeal, counsel contends that the applicant's spouse would also suffer extreme hardship if she remains in the United States. He states that since she gave birth to their child, the applicant has taken over the running of their cellular telephone accessories business and that she would have to sell the business if he is removed because she knows nothing about the business' finances. Counsel further states that even if the applicant's spouse continued to operate the business, it would not provide her with enough income to support her family in the United States and the applicant in Pakistan. He asserts that the applicant would not be able to earn enough in Pakistan to support his family as he does not have the education or skills to obtain a job paying what he earns in the United States. Counsel also contends that the applicant's spouse has completed three years of college and wishes to return to school to obtain a nursing degree. He states that if the applicant is removed, there is no way his spouse would be able to continue her education. Counsel also states that, in the applicant's absence, his spouse would not be able to turn to her parents for a financial assistance or for help in caring for her son.

To establish that the applicant's spouse would suffer emotional hardship if the applicant's waiver application is denied, counsel points to the emotional hardship that the applicant's immigration

problems have already caused his spouse. He asserts that the applicant's spouse is having trouble concentrating and remembering things as a result of the high level of stress she is under and that she has difficulty sleeping at night, and suffers from frequent headaches and a decreased appetite. Counsel states that the applicant's spouse was diagnosed with depression while she was pregnant.

While the AAO does not find sufficient documentary evidence to support counsel's claims regarding the financial hardship that would be experienced by the applicant's spouse in his absence, we do determine that the record demonstrates that she would experience significant emotional hardship if he is removed. Documentation of the emotional hardship that would be created by the applicant's removal is provided by a 2008 psychological evaluation prepared by licensed clinical psychologist [REDACTED]. Based on the results of the Beck Depression Inventory and Beck Anxiety Inventory he administered to the applicant's spouse and his clinical observations, [REDACTED] finds the applicant's spouse to be "significantly anxious and depressed" as a result of her fears over the separation of her family. [REDACTED] states that he was born and raised in Pakistan and is familiar with Pakistani culture, which has no concept of single parent families. He reports that it is "extremely difficult for a single woman of Pakistani origin to live as a single mother and maintain a respectable status in society at large" and that "[a] family's identity and respect in a Pakistani community is primarily based upon the social status of the husband/father." [REDACTED] also states that the applicant's removal would have a profound impact upon his child's psychological/emotional development as he would have to grow up without a father. [REDACTED] concludes that based on the applicant's spouse's state of mind, she would benefit from individual psychotherapy and that the need for psychopharmacological intervention should also be evaluated.

A second psychological evaluation of the applicant and his spouse, based on a series of interviews conducted by licensed clinical social worker [REDACTED], in October 2009 diagnoses the applicant's spouse with Generalized Anxiety Disorder and Postpartum Depression. [REDACTED] finds the applicant's spouse to be exhibiting symptoms of depression and anxiety, specifically fear of being alone; helplessness; fear of losing loved ones; impaired memory and concentration; fatigue; irritability; insomnia; feeling scared; mistrustfulness; acne; dizziness; low energy; panic attacks; shaking hands; sweaty hands; headaches; and heart palpitations. [REDACTED] also indicates that she reviewed the progress notes from the applicant's spouse's doctor who has diagnosed the applicant's spouse with postpartum depression and that she concurs in this diagnosis. She notes that the applicant's spouse has been evaluated against the Edinburgh Postnatal Depression Scale, a widely-used screening mechanism for postpartum depression, and reports that her score of 16 indicates a high likelihood of depression.

A byproduct of the applicant's spouse's depression and anxiety, [REDACTED] asserts, is the "noticeably flat head shape" or plagiocephaly exhibited by her son who was present during some of [REDACTED] interviews with the applicant and his spouse. Based on her experience as a clinician with the Infant Welfare Society of Chicago, [REDACTED] finds the condition of the applicant's son's head to be the likely result of his mother's poor mental health, as she is too depressed to have the energy to carry and play with him and he, therefore, spends too much time in his crib or an infant seat. She concludes that the applicant's removal would result in the worsening of his spouse's

depression and anxiety and that it would also negatively affect her son's development and health. [REDACTED] recommends that the applicant's spouse be evaluated by a specialist in postpartum depression and indicates that she would benefit from individual counseling.

The AAO finds that when considered together, the above evaluations distinguish the emotional hardship that would be experienced by the applicant's spouse in his absence from that normally created when spouses are separated. Specifically, the AAO notes that [REDACTED] reports that she has reviewed medical records for the applicant's spouse that indicate she is suffering from postpartum depression following the birth of her child and that the physical appearance of applicant's child reflects that her depressive state may be affecting his development. We also acknowledge [REDACTED] observation that Pakistani culture has no concept of single parent families and that for a woman of Pakistani origin living as a single mother carries with it the potential of social stigma. In light of this evidence, the AAO finds the record to establish that the applicant's spouse is already dealing with a serious mental health issue that would exacerbate her emotional reaction to being separated from the applicant. We further note the impact on the applicant's spouse of living as a single parent in a community where her choice to remain in the United States without the applicant would reflect negatively upon her. When these specific factors, and all the additional hardships normally created by the separation of spouses are considered in the aggregate, we conclude that the applicant has demonstrated that his spouse would experience extreme hardship if he is removed and she remains in the United States.

The applicant has established extreme hardship to his spouse as a result of his inadmissibility and is, therefore, statutorily eligible for a waiver under section 212(i) of the Act. Accordingly, the AAO now turns to a consideration of the applicant's eligibility for a favorable exercise of discretion in this matter.

In discretionary matters, the applicant 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 misrepresentation in obtaining a student visa to the United States for which he now seeks a waiver, and his unlawful employment and residence in the United States. The mitigating factors in the present case are the applicant’s U.S. citizen spouse and child; the extreme hardship to his spouse if he were to be denied a waiver of inadmissibility; the care and support he has provided his father- and mother-in-law, as evidenced by their statements; the absence of a criminal record; and the affidavits of support attesting to his support of and involvement in his community.

The AAO finds that the misrepresentation committed by the applicant was serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the mitigating 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 will be sustained.