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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
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Services

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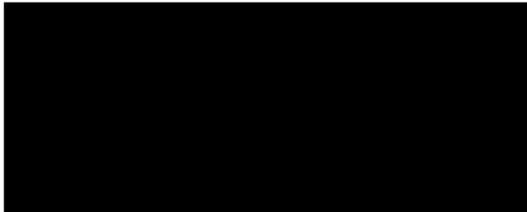
DATE: Office: CALIFORNIA SERVICE CENTER

FILE:

NOV 09 2011
IN RE: Applicant:

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 Director, California Service Center. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and previous decision of the AAO will be affirmed.

The applicant is a native and a citizen of Pakistan who used false documents in an attempt to enter the United States. The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Service Center Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) October 16, 2006. On appeal, the AAO found that the applicant's spouse would not experience extreme hardship and denied the appeal. *AAO Decision*, dated February 3, 2009.

On motion, counsel for applicant asserts the AAO's decision relied on speculation, and that in the intervening years that it took to issue the decision additional evidence supporting the applicant's claim of extreme hardship had become available. *Brief in Support of Appeal and Motion*, received March 5, 2009.

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 indicates that the applicant presented the passport of another person when entering the United States in 1995, and thus entered the United States by materially misrepresenting his identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

The record contains, but is not limited to, the following evidence: a brief from counsel; statements from the applicant's spouse; periodicals printed from the internet on asthma and its treatment in Pakistan; periodicals printed from the internet concerning environmental conditions in Pakistan; internet periodicals on the economic conditions in Pakistan; internet periodicals on incidents of political violence in Pakistan; copies of joint tax returns from 2005, 2007, 2008; a document labeled [REDACTED] compiled by [REDACTED], dated February 27, 2009; a statement by [REDACTED] dated February 22, 2009; country conditions materials on Pakistan, including a February 25, Travel Warning by the U.S. Department of State, Bureau of Consular Affairs, World Health Organization reports and Human Rights Watch publications; a copy of a hand written statement by

dated July 25, 2006; and documents filed in relation to the applicant's Form I-130 and Form I-485.

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

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 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-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.

Counsel asserts on motion that the applicant’s spouse suffers from several medical conditions and would experience physical, medical and financial hardship upon relocation to Pakistan. *Statement in Support of Motion*, dated March 4, 2009. Counsel explains that the AAO’s previous decision was in error and that additional evidence of hardship has become available. Counsel explains that the applicant’s spouse suffers from severe asthma, degenerative joint disease, arthritis and osteopenia, takes numerous medications for these conditions and that her asthma will be exacerbated by the low air quality, pollution and dust in Pakistan’s environment. The applicant’s spouse previously asserted that she suffers from osteoarthritis, high blood pressure and chronic cough, and that she has been prescribed numerous medications to cope with the pain from her conditions. *Statement of the Applicant’s Spouse*, July 27, 2006.

The AAO notes that the it has not been previously asserted that the applicant’s spouse suffers from asthma, either in the initial application or on appeal. On motion, counsel for the applicant submits a

statement from [REDACTED], stating that the applicant's spouse suffers from severe lung disease, and includes numerous background articles on asthma and the disease's prevalence and treatment in Pakistan. Despite characterizing her asthma condition as severe, the record does not contain any documentation on the applicant's spouse's history of asthma, or other medical records pertaining to her asthma such as prescription notices, pharmacy receipts, doctor's visits or hospital visits. [REDACTED] letter does not indicate whether her treatment can be controlled and does not indicate whether he has prescribed her any medication to control the condition. While the AAO acknowledges [REDACTED] statement, it notes that his letter is isolated in its context and fails to fully corroborate the medical impacts asserted by counsel and the applicant's spouse.

Counsel asserts the applicant's spouse would not be able to receive treatment for her asthma condition in Pakistan, but the evidence submitted regarding asthma treatment in Pakistan does not support this assertion. In one article submitted by the applicant, which discusses incidents of misdiagnosis of the disease in Pakistan, the author concludes that inhalers are the best way to prevent asthma attacks and to rescue asthma sufferers during an attack. *Karachi: Asthma-related deaths due to wrong treatment*, December 23, 2001, source unavailable. In this case, the applicant's spouse has been diagnosed with the condition, thus misdiagnosis should not be a problem. Further, as noted above, the two medical documents that have been submitted do not state whether or not the applicant's spouse has been prescribed any medication to control her condition. A second article submitted by the applicant indicates that substantial control of asthma was seen with the use of medical inhalers. *Assessment of Asthma Control Using the Asthma Control Test at a Tertiary Care Center in Karachi, Pakistan*, published March 2009. The periodical submissions do not implicate the environmental conditions in Pakistan, nor do they indicate that the applicant's spouse would be at a heightened risk of suffering from the condition, as asserted by counsel, nor do they establish that she would be unable to obtain treatment for her condition in Pakistan. The evidence submitted does not support counsel's assertions.

Counsel asserts that the country conditions in Pakistan would pose an extreme hardship to the applicant's spouse upon relocation. He asserts that Pakistan is the most dangerous country on earth, that the government is corrupt and ineffectual, and that the applicant's spouse would be at risk of injury or death due to violence against Americans and the social-political climate in Pakistan. Counsel also asserts that the applicant and his spouse would not be able to find adequate employment or afford medical care upon relocation to Pakistan, and that conditions in Pakistan are less favorable for women.

The record contains numerous periodicals discussing incidents of social and political violence in Pakistan, as well as materials covering the economic conditions in Pakistan and a recent travel warning by the U.S. Department of State. The record also includes numerous articles on social, political and economic conditions in Pakistan. These materials discuss the economic conditions in Pakistan on a national level, and are sufficient to infer that the standard of living in Pakistan is lower than that of the United States, but are not sufficient to establish that the applicant would be unemployed or be unable to find a job. The AAO takes note of the security concerns that exist for American citizens in Pakistan. While these materials may suggest that Pakistan has a lower standard

of living than the United States, it is not sufficient to simply establish that a country of relocation has a lower quality of living, or fewer economic opportunities, as most countries will have a lower standard of living compared to the United States. *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); *see also Matter of Ige*, 20 I&N 880 (BIA 1994) (reasoning that the fact that economic, educational, and medical facilities and opportunities may be better in the United States does not in itself establish extreme hardship). The record must establish that the impact on a qualifying relative rises above the common impact of relocation to a degree of creating an uncommon hardship factor. The general country conditions materials are not sufficient to demonstrate that the applicant or his spouse would be specifically impacted by economic conditions, or that the applicant would be unable to find employment. Further, the AAO must consider all factors which impact an asserted hardship to a qualifying relative in order to make an accurate determination of the degree of impact. In this case, the applicant's spouse is a native of Pakistan, and is familiar with its language, culture, social conditions and security concerns. The AAO also notes that, as asserted by counsel, the applicant and his spouse would be relocating to Karachi, Pakistan's largest city, where there would be greater access to medical facilities, employment opportunities and greater security. When these factors are taken into consideration, the country conditions materials submitted, without further evidence that the applicant's spouse will be specifically impacted, do not adequately support counsel's assertions. Based on these observations the AAO does not find the record to support that the cultural readjustment after having resided abroad for a period of time, or that the general conditions in Pakistan, would present an uncommon hardship factor on the applicant's spouse.

The AAO recognizes that the applicant's spouse would desire to remain in the United States with her spouse, that she has some medical issues, that she claims not to have any family contacts in Pakistan and has family members in the United States. However, even when considering these hardship factors in the aggregate, in light of the fact that the applicant's spouse is a native of Pakistan and resided in the country until she was roughly 40 years of age, and the lack of probative evidence supporting the assertions of significant medical hardship, these hardship factors do not rise above the common impacts associated with relocation abroad with an inadmissible family member.

On motion counsel asserts that the applicant's spouse will experience physical, emotional and financial hardship upon separation. *Statement in Support of Motion*, dated March 4, 2009. He explains that the applicant's spouse is solely dependent on the applicant financially and physically, and that it was improper for the AAO to assume that the applicant's children or other family members would be able to mitigate the impacts of the applicant's departure. Counsel further states that the applicant's spouse will not be able to support the mortgage on her house without the applicant's assistance. He states that prior injuries to her pelvis and her weakened bones due to osteoparia and arthritis make it difficult for her to ambulate, and that she needs the applicant in the United States to afford her health care needs.

Counsel explains that the applicant suffers from degenerative joint disease, osteopenia and arthritis and that these conditions prevent the applicant's spouse from being able to work to support herself. He further states that the applicant's spouse provides physical support for the applicant such as retrieving her medications, massaging her in baths, providing exercise for her and other household

chores. The applicant's spouse has asserted that she suffers from high blood pressure, osteoarthritis, a chronic cough and has been prescribed several medications for her condition. *Statement of the Applicant's Spouse*, July 26, 2006. She states that she cannot walk upstairs or lift heavy things.

In support of these assertions the record contains two documents, a statement from [REDACTED], M.D., dated February 22, 2009, and a statement from [REDACTED], dated July 25, 2006.

The statement from [REDACTED] states that the applicant's spouse has difficulty in ambulation due to lower back pain and pelvic pain. The applicant's spouse asserted in a previous statement that she dislocated her hip and broke several bones when she resided in Pakistan, and that she still suffers from these events, but the record does not provide any documentation of her previous injuries and no such injuries or other orthopedic history are discussed in either the letter from [REDACTED] or [REDACTED]. The AAO notes that, despite assertions from both counsel and the applicant's spouse, there is no evidence that the applicant's spouse has been prescribed any medication to treat her for pain or to help control her other medical conditions. The AAO will accept [REDACTED] statement that the applicant's spouse suffers from degenerative joint disease, osteopenia and arthritis, as well as asthma, despite the fact that this was never previously claimed. However, these two documents are not sufficient to corroborate counsel's assertions regarding the severity and impact of her medical conditions. They do not discuss any prognosis for the applicant's spouse's conditions, do not discuss the degree and severity of her conditions beyond a general statement of pain and ambulatory difficulties, do not state that she has high blood pressure, do not discuss any medications she has been prescribed or efforts to control her conditions, do not discuss the degree of impact her conditions have on her ability to function on a daily basis or that she cannot work, do not state that she needs a daily care-giver or that it must be the applicant which specifically provides for her and do not indicate what medications, if any, she has been prescribed to control her conditions. In addition, as noted above, these statements are not corroborated by other medical records or other documents in the record such as hospital or doctor's visits, invoices for medical services, copies of prescription notices, pharmacy receipts, etc. In light of the fact that these two documents fail to fully corroborate counsel's assertions the AAO cannot determine that the degree of physical impact on the applicant's spouse creates an extreme hardship factor on the applicant's spouse. Nonetheless, the AAO will give some consideration to the fact that the applicant's spouse has medical conditions when considering the overall impact to her upon separation.

Despite counsel's assertion that the AAO cannot consider other factors which might be relevant to an asserted impact, the AAO's reasoning in the prior decision was proper. The record did not, and still does not, establish that the applicant's spouse's children would be unable to assist the applicant's spouse, either physically or financially, in order to mitigate the impacts of the applicant's departure. It is the applicant's burden to establish eligibility in these proceedings. To assert that the AAO was speculating in this regard when the applicant has failed to illuminate the matter is an improper shift of the burden of proof. The AAO must determine whether an assertion is more likely than not to be true, this includes considering all factors which might impact an asserted hardship. The record does not clarify why the applicant's spouse's children would be unable to provide

physical assistance to the applicant's spouse if she needed it, and does not establish that she is unable to work in order to support herself.

With regard to financial hardship, the record does indicate that the applicant's spouse purchased a property in 2006 and that she currently has a mortgage on that property. The record contains evidence that the applicant has been working and lists his income on their joint tax statements, however, there is nothing which documents that he has been paying the mortgage on her property or that payments on the mortgage have come from their bank account. Counsel asserts that the applicant's children are struggling with their own families and that the applicant has provided financial assistance to them in the past, however, as with other assertions by counsel, there is nothing in the record to support these assertions, and the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record includes a Seller Net Sheet compiled by KeyPos Realty. The estimate indicates that if their residential property were sold it would result in the applicant's spouse having to pay \$11,000 in closing costs to cover the cost of commission and closing fees. However, the document also notes that it is only an estimate, and could change based on the actual sale price of their property. While this document attempts to address a potential financial impact if the applicant's spouse were to sell her property upon relocation or have to sell it because she could no longer afford it, the AAO notes that even if the applicant's spouse were to incur a loss on the sale of the property, this is not considered an uncommon hardship factor. *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985)(affirming that the loss on sale of a home and loss of present employment and its benefits did not constitute extreme hardship, but were normal consequences of removal). In light of the fact that the record does not corroborate that the applicant's spouse is unable to work, or that her children would be unable to provide some financial assistance to the applicant's spouse, or even that the applicant would be unable to support his spouse from abroad, the AAO cannot determine from evidence in the record that the applicant's spouse would experience any uncommon financial hardship due to separation.

While counsel for the applicant has made numerous assertions regarding the applicant's spouse's inability to support herself financially and physically due to medical conditions, the evidence in the record largely addresses country conditions for Pakistan. There are two statements from the applicant's spouse's doctors, two documents pertaining to the applicant's spouse's property mortgage and some tax returns. Assertions of a hardship cannot be considered in a vacuum, and must be weighed in the totality of circumstances in order to determine the accuracy of the assertions and the severity of any asserted hardship. It is the applicant's burden to establish eligibility in these proceedings, this burden includes clearly articulating a basis of hardship and supporting any assertions with relevant, probative evidence. In this case, the evidence does not fully corroborate the counsel's assertions, and the evidence that has been submitted is insufficient to establish that the hardship factors asserted, even when they are considered in the aggregate, rise above the common impacts to a degree resulting in extreme hardship.

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 husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's spouse may experience some physical hardship and financial impact as a result of the applicant's inadmissibility. These assertions, however, are common hardships associated with removal and separation, and the record does not contain sufficiently probative evidence to distinguish the impacts on the applicant's spouse from those normally experienced by the relatives of inadmissible aliens such that they 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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The motion to reopen and reconsider is granted. The previous decision of the AAO is affirmed and the application is denied.