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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: **NOV 16 2011**

Office: PHILADELPHIA, PA

FILE:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that 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), for obtaining an immigration benefit through fraud or the willful misrepresentation of a material fact. The record also reflects that the applicant is married to a United States citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated May 11, 2009.

On appeal, counsel asserts that the decision of the Field Office Director is arbitrary, capricious, and in violation of the law. He asserts that the Field Office Director did not evaluate the evidence presented by the applicant in the aggregate. Counsel contends that removal of the applicant from the United States would result in extreme hardship to his U.S. citizen spouse. *Form I-290B, Notice of Appeal or Motion*, dated May 19, 2009; *see also counsel's brief*, dated October 15, 2010.

The record includes, but is not limited to, counsel's brief; statements from the applicant, his spouse and his mother-in-law; tax returns and W-2 Wage and Tax Statements for the applicant; psychological evaluations of the applicant's spouse; medical statements regarding the applicant's spouse; letters of employment for the applicant; bills, bank statements and other financial documents; and country conditions information on Pakistan. The entire record was reviewed and all relevant evidence considered in reaching 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.

The record reflects that the applicant last entered the United States on December 16, 1997, using a passport and visa not lawfully issued to him. In his March 16, 2005 statement, the applicant asserts that he came to the United States with his father's friend, [REDACTED], that he was 18 years old at the time and that he was unaware that the passport [REDACTED] used to get him admitted to the United States was not his own. On appeal, counsel asserts that the applicant was 18 years old when he first came to the United States and that he was brought to the United States through the arrangement of his parents using documents that he now believes were fraudulent.

Although the applicant's statement indicates that he was 18 years of age at the time of the misrepresentation, the AAO finds that he was old enough to have known that he was seeking admission to the United States based on documents that were not his. In *Malik v. Mukasey*, 546 F.3d 890-92 (7th Cir. 2008), the 7th Circuit Court of Appeals found that two 17-year-old brothers were accountable for having misrepresented their nationality in asylum proceedings, noting the finding by the Board of Immigration Appeals that "the brothers were young when their fraud occurred but ... that they were old enough to know better and to be held accountable for their actions." In this case, the applicant does not provide any evidence other than his self-serving statement to prove that he was not party to the misrepresentation. Without evidence to the contrary, the AAO finds that, at 18, the applicant was old enough to have known or old enough that he should have known that he was seeking admission based on fraudulent documents. In that the applicant obtained admission to the United States with a passport and visa not lawfully issued to him, he procured an immigration benefit under the Act through fraud or the willful misrepresentation of a material fact and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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 or, in the case of a VAWA self-petitioner, 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. Hardship to an applicant or other family members 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 United States Citizenship and Immigration Services (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 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 asserts that the applicant's spouse suffers from "a multitude" of medical and psychiatric problems that predate her marriage to the applicant and that she depends on the applicant for

support. In a July 2, 2007, statement, the applicant's spouse asserts that she will endure extreme hardship if the applicant is removed to Pakistan because she and her children depend on the applicant for financial support. In previous statements, the applicant's spouse asserts that she was abused by her father and her brother, that she severed her relationship with her family and obtained a restraining order against her father and her brother, and that the applicant is the only one who provides her with emotional and financial support. She states that she was only allowed to attend school through the 6th grade and, therefore does not have the education necessary to support herself and her children. She indicates that separation from the applicant will be devastating for her and her children. In his statement dated December 5, 2005, the applicant asserts that his spouse suffers from severe anxiety and depression due to the abuse, that she suffered at the hands of her father and her brother, and that she depends on him for emotional and financial support. He states that if he is removed from the United States, she will not be able to support herself and their children.

In support of these hardship claims, the record contains two psychological evaluations prepared by [REDACTED] Psychiatrist, and an undated medical statement from [REDACTED]. In his first evaluation of the applicant's spouse on June 6, 2007, [REDACTED] states that the applicant's spouse has sought treatment from him since December 13, 2005. He indicates that during her first appointment, the applicant's spouse reported to him that she felt depressed and anxious after she learned that the applicant might be removed from the United States. [REDACTED] also states that the applicant's spouse indicated to him that she might "hurt" herself if the applicant is removed and notes that she has previously exhibited suicidal behavior by cutting herself with a razor and overdosing. He states that this suicidal behavior was triggered by the stress of taking care of an infant and the possible imminent removal of the applicant. [REDACTED] finds that the applicant's spouse suffers from severe depression and that her mental status is precarious. He recommends that the applicant's spouse continue with outpatient treatment, counseling and medication.

In a second evaluation dated October 20, 2010, [REDACTED] diagnoses the applicant's spouse with Major Depression Recurrent. He observes that the applicant's spouse has become increasingly agitated and extremely anxious about the imminent removal of the applicant. He indicates that the applicant's spouse's current psychological state is tenuous at best and that she has few coping skills, and that she may be at significant risk for suicide if the applicant is in fact removed. [REDACTED] concludes that the applicant's spouse is in a precarious situation, and that her limited understanding and rigid mindset leaves her vulnerable to a future suicide attempt.

The undated medical statement from [REDACTED] states that the applicant's spouse was seen on August 18, 2004, and that she looked very pale, weak and lethargic. [REDACTED] indicates that an examination revealed that she had an acute asthma attack. He reports that the applicant's spouse has a history of asthma, and that she was advised to have complete bed rest and continue with her medications.

Regarding the financial hardship claim, the record contains letters of employment from the applicant's employers; a Form G-325A, Biographic Information, prepared by the applicant's spouse that indicates she has been a housewife since 2005 and has no employment history; a Form G-325A completed by the applicant indicating that he has been a self-employed Taxi cab owner/driver since August 2005. The form also indicates a list of his former employers beginning February 1998. The record includes a letter written

by [REDACTED] Principal of [REDACTED] Trenton, New Jersey, the middle school attended by the applicant's spouse, which indicates that the applicant's spouse completed 6th grade but did not go onto the 7th grade. The record also includes W-2 Wage and Tax statements relating to the applicant, bills, bank statements, and other financial documents.

The AAO finds the record to contain sufficient evidence to establish that the applicant's spouse is experiencing significant emotional hardship as a result of her fear of separation from the applicant and that her current mental status will further deteriorate if he is removed. The AAO also notes that the record supports a finding that the applicant's spouse depends on the applicant for her financial support and given her limited education, the absence of any employment experience and her need to care for her two small children, she will experience significant financial hardship if the applicant is removed. Consequently, when the applicant's spouse's fragile mental health and her dim prospect for employment are added to the difficulties and disruptions normally created by the removal or exclusion of a family member, the AAO concludes that the applicant's spouse would experience extreme hardship if she continues to reside in the United States without the applicant.

On appeal, counsel indicates that the applicant's spouse will experience difficulty in relocating to Pakistan because she has lived in the United States since she was six-years-old, the conditions in Pakistan are dangerous and she would be at risk of harm at the hands of her father and brother, who now live in Pakistan. Counsel asserts that the Taliban is operating in Pakistan and that much of the persecution by the Taliban is perpetrated against women. In her statement of July 2, 2007, the applicant's spouse asserts that her brother, who abused her in the past now resides in Pakistan, and that if she returns there, she will "fall victim to his prey." She indicates that her marriage to the applicant is not a traditional marriage sanctioned by her family and that she will endure further abuse because of the nature of her marriage. The applicant's spouse also states that she is receiving treatment for her psychological problems and does not want to sever the relationship she has with her doctor. She asserts that if she relocated to Pakistan, she might not be able to receive the same level of care for her mental health problems. The applicant's spouse further states that she fears her two daughters would be abused in Pakistan because female children are not treated kindly there by conservative families. The applicant states that his spouse will not be able to return to Pakistan with him because she fears that her abusive father and brother as well as others associated with them will harm her and that the government of Pakistan will not protect her.

In support of these claims, the record includes an undated statement from the applicant's spouse's mother indicating that the applicant's spouse's father and brother now reside in Pakistan, and that two of her brother-in-laws, who pose the most danger to the applicant's spouse and her daughters also live in Pakistan. She asserts that there are more resources to protect the applicant's spouse and her daughter in the United States, which will not be available to them in Pakistan. The record also includes a copy of a temporary restraining order against the applicant's spouse's father and two online news articles from The Associated Press on violence in Pakistan. The first article, "Violent Day in Pakistan: U.S. Strikes Taliban Forces" reports that violence is engulfing Pakistani territory along the Afghan border as the U.S. and allied forces battle with al-Qaeda and Taliban militants. The second article, "Pakistani Minorities Fall Prey to Taliban" reports that as the Taliban gains a stronger foothold in Pakistan, increasing violent assaults against religious minorities are further evidence of its growing power and influence and that Pakistan is listed as the seventh most dangerous country for minorities. The AAO notes that due to the

high level of violence by terrorists in Pakistan, the U.S. Department of State has issued a travel warning advising U.S. citizens against travel to Pakistan.

The U.S. Department of State notes that:

The presence of Al-Qaida, Taliban elements, and indigenous militant sectarian groups poses a potential danger to U.S. citizens throughout Pakistan. Threat reporting indicates terrorist groups continue to seek opportunities to attack locations where U.S. citizens and Westerners are known to congregate or visit...Terrorists have disguised themselves as Pakistani security personnel to gain access to targeted areas... U.S. citizens throughout Pakistan have been kidnapped for ransom or for personal reasons.

Travel Warning, U.S. Department of State, Bureau of Consular Affairs, Pakistan, dated August 8, 2011.

Having reviewed the record, the AAO finds the termination of the applicant's spouse's long-term residence in the United States that began when she was six-years-old; her mental health problems, which predates her relationship with the applicant; the loss of the long-term mental health care provider on whom she has come to depend; and the security risks for U.S. citizens in Pakistan, when reviewed in the aggregate, to establish that the applicant's spouse would experience extreme hardship if she relocated to Pakistan to be with him.

Accordingly, when the AAO considers the applicant's spouse's fragile mental health condition, the financial impact of her separation from the applicant, the additional burden of caring for her two daughters as a single parent with little prospect for employment, and the hardships routinely created by the separation of families in the aggregate, we find the record to demonstrate that the applicant's spouse would experience extreme hardship if she remains in the United States without the applicant.

As the applicant has established extreme hardship to her spouse as a result of his inadmissibility, he is statutorily eligible for a waiver under section 212(a)(B)(v) of the Act. Accordingly, the AAO now turns to a consideration of the applicant's eligibility for a favorable exercise of discretion.

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 entry into the United States by fraud or the willful misrepresentation of a material fact for which he now seeks a waiver, the period of unlawful presence and the period of unauthorized employment in the United States. The mitigating factors in the present case are the applicant’s U.S. citizen spouse and two U.S. citizen children; the extreme hardship to his spouse if the waiver application is denied; the absence of a criminal record; and his long-term employment in the United States and payment of taxes.

The AAO finds the applicant’s immigration violations to be serious in nature and does not condone them. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal will be sustained.