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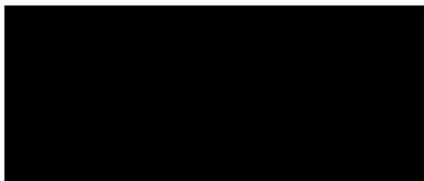


DATE: Office: NEW YORK, NY FILE: 

IN RE: **NOV 23 2011** 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:



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 must 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 District Director, New York, New York. The matter 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), for procuring admission to the United States through fraud or willful misrepresentation of a material fact. The applicant's spouse and two stepchildren (ages 23 and 24) are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to his spouse and the application was denied accordingly. *Decision of the District Director*, dated August 13, 2008.

On appeal, counsel states that United States Citizenship and Immigration Services (USCIS) erred and abused its discretion in denying the waiver, the factual statements in the decision are erroneous, and the applicant submitted ample evidence of extreme hardship to his spouse. *Form I-290B*, received September 9, 2008.

The record includes, but is not limited to, counsel's brief, the applicant's statements, the applicant's spouse's statements, financial documents and a psychological evaluation. The entire record was reviewed and considered in rendering a decision on the appeal.

The district director found that the applicant used a false passport to procure admission to the United States on December 16, 1990. *Decision of the District Director*. Counsel and the applicant assert that the applicant entered without inspection in December 1990 and that the applicant's prior attorney incorrectly listed his method of entry on prior forms and improperly submitted two Forms I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, twice. *Brief in Support of Appeal*, undated and *Applicant's Statement*, dated April 11, 2008.

There is conflicting information in the record with respect to the applicant's manner of entry. On the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, filed on June 24, 1997, the applicant listed that he entered the United States without inspection on December 16, 1990. Similarly, on the Form I-485A, Supplement A to Form I-485, filed on June 13, 2001 and Form I-485 filed on July 28, 2007 the applicant stated that he entered the United States without inspection.

However, on the applicant's Form I-601 signed on March 20, 1997, the applicant stated that he used a false passport to enter the United States; he stated at his adjustment of status interview on March 26, 1998 (based on the aforementioned June 24, 1997 Form I-485) that he used someone else's passport to enter the United States; he answered "yes" to the question related to fraud or willful misrepresentation on his Form I-485 filed on June 13, 2001 and he included an attachment stating that he used a fraudulent document to enter the United States; and he filed a Form I-102 on February 13, 2006 and June 2, 2006 in which he claimed to have been admitted to the United States on

December 16, 1990. Counsel states that the applicant admitted that he entered the United States with a false document at his September 3, 2002 interview. *Brief in Support of Appeal*. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO notes that the applicant has failed to adequately explain the inconsistencies. The AAO finds by the preponderance of evidence that the applicant used a false passport to procure admission to the United States on December 16, 1990. Based on this misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, which provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (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 stepchildren 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.

The psychological evaluation in the record reflects that the applicant's spouse was born in Brooklyn; she has lived in Brooklyn her entire life; and her entire family resides in Brooklyn. *Psychological Evaluation*, dated April 20, 2008. The psychologist states that the applicant's spouse's children do

not live with her but she sees them everyday. *Id.* The psychologist states that there is no possibility of the applicant's spouse as a Catholic woman residing in Pakistan. *Id.* The AAO notes that the psychologist is not an authority on Pakistan and that the applicant's spouse does not make this claim. However, the February 2, 2011 U.S. Department of State Travel Warning for Pakistan states that reports of religious intolerance rose in 2010 and members of minority communities, including a U.S. citizen, were victims of targeted killings. The travel warning also states that terrorist groups continue to seek opportunities to attack locations where U.S. citizens congregate or visit and U.S. citizens have been victims of attacks in the past few years.

Considering the unique issues in this case, including the applicant's spouse's lack of ties to Pakistan, separation from her two children, and documented issues concerning the security issues in Pakistan, the AAO finds that the applicant's spouse would suffer extreme hardship were she to relocate to Pakistan.

The applicant's spouse states that the applicant is a wonderful spouse, stepfather and stepgrandfather; and she is suffering, hurt and confused. *Applicant's Spouse's Second Statement*, dated July 13, 2009. The applicant's spouse states that her two young adult children reside with her and the applicant; they are a loving family unit; she has been unemployed since July 2006; the applicant is the only financial provider for the family; the applicant provides paternal support and guidance to the children; separation from the applicant would break the hearts of her and her children; and she is worried about her children's emotional states. *Applicant's Spouse's First Statement*, dated April 3, 2008. The psychologist states that the applicant's spouse has been too anxious and depressed to focus on her school work and is currently at home full-time; the applicant's spouse's son lives with his grandmother; the applicant's spouse is crying a lot, she has difficulty sleeping, she is gaining weight, her smoking has increased due to stress, she has trouble concentrating and has stopped going to college, and she is suffering from an adjustment reaction with anxiety and depression; and since her sister's spouse was removed, she has seen the effects on her sister and this weighs on her. *Psychological Evaluation*. The psychologist concludes that the applicant's spouse is suffering from Adjustment Reaction with Anxiety and Depression. *Id.* The psychologist also details the positive influence of the applicant in the lives of his stepchildren and their close relationship to him. *Id.* The AAO notes that there is no evidence that the applicant's spouse discontinued her college studies due to the inability to concentrate.

The financial records reflect that the applicant is the sole source of financial support. The record includes numerous bills for the applicant and his spouse. However, there is no evidence that the applicant's spouse would be unable to obtain employment. The record is not clear as to whether the applicant's spouse's children reside with her and whether she financially supports them.

The AAO notes the emotional hardship that the applicant's spouse is experiencing. However, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that she would suffer extreme hardship upon remaining in the United States.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *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 appeal is dismissed.