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

115

[REDACTED]

Date: OCT 12 2011 Office: CHICAGO, IL FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois. 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant was married to a U.S. citizen, established he is a battered spouse, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to continue residing in the United States.

The field office director found that the applicant failed to establish extreme hardship to himself or his children and denied the waiver application accordingly. *Decision of the Field Office Director*, dated May 18, 2009.

On appeal, counsel contends the field office director summarily dismissed the applicant's claim of hardship and failed to consider all of the evidence, particularly considering the psychological reports, country conditions in Pakistan, and the applicant's three U.S. citizen children.

The record contains, *inter alia*: three statements from the applicant; copies of the birth certificates of the applicant's three U.S. citizen daughters; two psychological reports; articles addressing conditions in Pakistan; copies of tax records; and an approved Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent 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.

In this case, the record shows, and the applicant concedes, that in April 1997, he entered the United States using a fraudulent passport and visa he purchased for \$5,000. *Record of Sworn Statement of Sabir Ahmed*, dated July 29, 2008. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant states that he and his wife got married in September 1997. According to the applicant, they had a good marriage until 2003. The applicant contends that the economy was bad and his wife wanted to sell the house. He states that his wife sold the house without telling him and kept the money. In addition, the applicant states that she took their three daughters and would hide them from him. He states that it would often take several months to find out where his children were. The applicant contends he became very depressed, cries when he is by himself, and is scared of his wife. He states that his daughters need him to financially support them. In addition, he states that his daughter, [REDACTED] has a severe medical condition. The applicant states he cannot return to Pakistan because he would not be able to see his daughters. He contends that it would not be possible for them to move to Pakistan with him because their mother would never allow it, they do not speak Urdu, and [REDACTED] would not be able to continue receiving the best medical care for her condition. He states that his children have had a hard life with lots of adjustments and that they need to feel stable. He states that if he returned to Pakistan, they would lose half of themselves and become very depressed. *Sworn Statements of [REDACTED]*, dated September 18, 2008, December 20, 2007, and December 4, 2006.

Psychological reports for the applicant state that the applicant's wife was highly abusive to him and contends that they are currently in divorce proceedings. The psychologist contends the applicant's wife's pattern of abuse was intense, continual, multi-faceted, and extreme, rising to the level of extreme cruelty. The applicant's wife treated him with lies, deceit, repeated manipulation, menacing threats, verbal abuse, intense control, and financial manipulation. The psychologist contends the applicant felt a deep sense of powerlessness, anxiety, and depression as a result of the abuse and that his ability to trust was destroyed. The applicant reportedly lost all sense of self-esteem, and feels insecure and unsure of himself to the extent that he can no longer make decisions. According to the psychologist, the possibility of being deported from the United States is emotionally devastating and psychologically severely traumatic for the applicant as well as his children. The psychologist contends that being forced to return to Pakistan attacks the applicant's and his children's self-esteem and self worth, and their sense of safety and well-being. In addition, according to the psychologist, one of the applicant's daughters

has a "severe cardiac defect, membranous ventricular septal defect with tricuspid valve pouch - restrictive shunt." The psychologist claims this condition is potentially dangerous and can cause growth and developmental retardation, puberty delay, shortness of breath, fatigue, tiring easily, seizures, fainting, panting, being easily exerted, breathing difficulty and hypercynosis." The psychologist states that if the applicant's children relocated to Pakistan with him, the applicant would feel enormous guilt and anxiety about his daughter's health and the children's adjustment to a culture they are unfamiliar with. The psychologist contends the children would also suffer extreme hardship because they have lived in the United States their entire lives, would be separated from their mother, would lose the educational opportunities available to them in the United States, and would lose the close relationships they have in the United States, including with their four aunts and uncles and numerous cousins. If the applicant's children remained in the United States and the applicant returned to Pakistan by himself, the psychologist states that the applicant would be psychologically devastated. The psychologist diagnosed the applicant with Adjustment Disorder with Mixed Anxiety and Depressed Mood. The psychologist concludes that if the applicant is forced to return to Pakistan, the applicant's depression and anxiety could be so severe and dangerous as to dramatically interfere with his functioning. *Psychological Reports*, dated August 1, 2008, and February 10, 2007.

Letters from [REDACTED] physicians indicate she has had regular cardiology appointments since 2002. According to a letter from 2002, when [REDACTED] was less than two years old, she was reevaluated for "membranous VSD." [REDACTED] physician states that her case was presented at a group discussion and the consensus was to not perform surgery or medicate, but to plan on surgical repair if her weight gain did not improve. *Letter to [REDACTED]*, dated September 4, 2002. More recent letters from her physicians indicate she has been reevaluated regularly and that her growth continues to be slow, but that she has had no cardiovascular problems. *Letter to [REDACTED]*, dated March 3, 2008; *Letters to [REDACTED]* dated January 19, 2005, and December 31, 2003; *Letter from [REDACTED]* dated March 31, 2003.

Upon a complete review of the record evidence, the AAO finds that if the applicant's waiver application were denied, he would suffer extreme hardship.

The record shows that the applicant has been classified as a battered spouse. According to the applicant, the abuse he suffered from his wife caused him to become very depressed. The psychological reports in the record corroborate the applicant's claim and describe the abuse he suffered as intense, continual, multi-faceted, and extreme. The applicant has been diagnosed with anxiety and depression and, according to the psychologist, it would be devastating and severely traumatic for the applicant to be removed from the United States. Moreover, the record shows that the applicant has three U.S. citizen children who were born in the United States, one of whom has issues with growth due to a cardiovascular problem. Letters from the child's physicians corroborate the applicant's contention that his daughter needs to continue seeing her doctors on a regular basis. Moreover, according to the applicant, he loves his children, financially supports them, and would "lose [him]self" without them. Letters of support in the record indicate that the applicant loves his daughters, has worked hard in order to provide them with a good life, and has even stood for hours outside of their school just to see them. *Letter from [REDACTED]* dated September 13, 2008; see also *Letter from [REDACTED]*,

dated September 12, 2008 (stating the applicant is a loving, caring, and supportive father who provides his children with unconditional love); *Letter from* [REDACTED], dated September 12, 2008 (stating the applicant adores his daughters and treats them like little princesses). Furthermore, the applicant contends he has lived in the United States since April 1997 and is very used to an American lifestyle. The applicant would need to readjust to a life in Pakistan after having lived in the United States for over fourteen years, a difficult situation made even more complicated given his mental health issues, the abuse he suffered, and the medical condition of his daughter. The AAO acknowledges the country conditions information contained in the record and recognizes the security risks of travel to Pakistan. *U.S. Department of State, Travel Warning, Pakistan*, dated August 8, 2011. In addition, even if the applicant's children were permitted to relocate to Pakistan with him, the U.S. Department of State acknowledges that although basic non-emergency medical care is available in major Pakistani cities, it is limited in rural areas and U.S. citizens may find them below U.S. standards. Moreover, effective emergency response is virtually non-existent in Pakistan. *U.S. Department of State, Country Specific Information, Pakistan*, dated March 24, 2011. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the [REDACTED] factors cited above, supports a finding that the applicant faces extreme hardship if he is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's misrepresentation of a material fact to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his three U.S. citizen children; the extreme hardship he and his children would suffer if he were refused admission; letters of support in the record describing the applicant as a hard worker and a loving father; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable 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 is sustained.