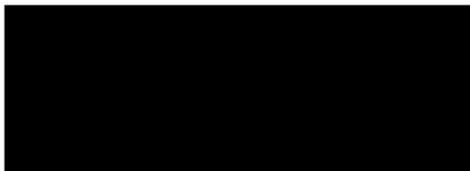


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**

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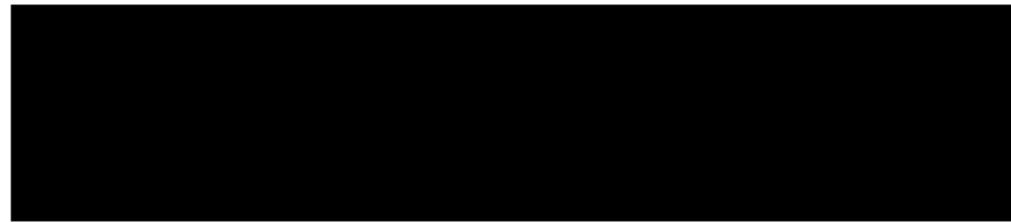
DATE: **OCT 18 2011** OFFICE: NEW YORK (GARDEN CITY)

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 District Director, New York (Garden City) and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 having sought to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. Through counsel, the applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. relative. The applicant does not contest the finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of District Director, New York (Garden City)*, dated April 28, 2009.

On appeal, counsel asserts that the District Director's decision should be set aside because the District Director failed to mention and assess all of the relevant hardship factors: the amount of time that the applicant's wife has resided in the United States; the applicant's wife has been a U.S. citizen since 2005¹; the applicant's wife does not have relatives remaining in Trinidad [and Tobago]; the applicant's wife does not have any relatives in Pakistan; the applicant's wife has close relatives in the United States (a son who is attending a gifted program in school and has medical problems; an LPR sister; and an LPR mother and LPR father who do not work, but live with and are supported by the applicant and his spouse, are elderly, and are in poor health); the applicant's wife would have to leave her job at JP Morgan Chase Bank that she has worked at since March 2001; the applicant's wife would lose the employer-based insurance for the family; the applicant's wife would lose her opportunity to receive an education; the applicant and his spouse would lose their home; and the applicant's spouse has been diagnosed with serious depression. Notice of Appeal or Motion (Form I-290B).

The record includes, but is not limited to: Notice of Appeal or Motion (Form I-290B); Application for Waiver of Grounds of Inadmissibility (Form I-601); Petition for Alien Relative (Form I-130); Application to Register Permanent Residence or Adjust Status (Form I-485); a sworn statement; briefs from various counsel; letters of support from the applicant, his wife, their friends, neighbors, and an imam; letters of support from licensed psychologists; residential mortgage records; credit card statements; bank account statements; copies of cancelled checks; medical letters; medical results; insurance cards; employment letters; tax returns and W-2s; tax donation

¹ The AAO notes that the applicant's spouse is a national of Trinidad and Tobago who naturalized in the United States on or about November 9, 2004.

letters; Internet articles; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act 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.

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* “is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party.” *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The “representations must be believed and acted upon by the party deceived to the advantage of the deceiver.” *Id.*

The intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir., 1995).

The record establishes that upon attempting to enter the United States on or about June 12, 1992, the applicant presented a fraudulent passport to U.S. immigration officials in New York, New York. Upon the applicant’s sworn admission that the passport was obtained through fraudulent means, the U.S. immigration officials placed the applicant in exclusion proceedings. The applicant was scheduled to appear before the Immigration Judge on or about October 6, 1992, but failed to appear for the hearing. The Immigration Judge administratively closed without prejudice the exclusion proceedings. Then, the applicant through counsel filed with the United States Immigration and Naturalization Service [hereinafter Legacy INS and predecessor to the United States Citizenship and Immigration Services (USCIS)] a Request for Asylum in the United States (Form I-589) on or about February 21, 1995, but later withdrew his request for asylum. On or about August 1, 1995, the Immigration Judge ordered that the applicant’s application for asylum be withdrawn with prejudice and that the applicant must depart from the United States no later than August 15, 1995. Also, on or about August 1, 1995, Legacy INS agreed that the applicant be paroled into the United States. The applicant did not depart as ordered; thereby, U.S. immigration officials issued a surrender letter to the applicant on or about May 9, 1996, indicating a removal date of June 28, 1996. The applicant failed to appear on the removal date, and has continuously resided in the United States since on or about June 12, 1992. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 record contains references to hardship the applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s child will not be separately considered, except as it may affect the applicant’s spouse.

The applicant through counsel states that his spouse “will suffer extreme hardship if [he] is not admitted into the United States. In fact, she already is suffering extreme hardship.” *I-290B Brief in Support of Appeal*, received June 29, 2009. And, the applicant’s spouse states that she and the applicant’s son rely on the applicant to “fulfill our basic needs to feel safe and secure – [the applicant] protects us from harm, calms our fears, takes care of us when we are sick; in general, he makes everything okay ... [The applicant] is my support – physically, mentally, emotionally, and financially.” *Letter of Support from [REDACTED]* dated June 5, 2008. Counsel also contends that the applicant’s spouse will suffer extreme medical hardship if the spouse were separated from the applicant, “ ... a woman who is suffering from a serious illness, an illness that would be exacerbated by [the applicant’s] removal.” *I-290B Brief in Support of Appeal, supra*. In support of the medical hardship that his spouse would endure, the applicant through counsel submitted letters from his spouse’s attending mental health professional, diagnosing his spouse with Major Depressive Disorder that continues to worsen: “[The applicant’s spouse] is clearly much more depressed than she was 1½ years ago ... Her affect was grim, depressive, anxious and extremely tense. She did not smile at all. Her voice quality was dejected, flat and low. The level of her depression during the second evaluation was clearly much greater than that during the first interview ... At present[,] she has great sleep disturbances and has lost between 10-12 pounds.

She has difficulty focusing, concentrating and paying attention and is chronically sad and anxious. She has frequent crying episodes and [a] reduced sexual libido. She stated that she has developed suicidal ideation and has had thoughts of taking pills. She has not made any suicide gestures ... In the event that [the applicant] returns to Pakistan, [the applicant's spouse's] depressive symptomatology will continue to exacerbate. It will be extremely difficult to treat her symptoms if [the applicant] returns to Pakistan because her symptoms will be rooted in the reality experience of the separation itself ..." *Letter of Support from* [REDACTED], dated May 18, 2009; *see Letter of Support from* [REDACTED], dated October 15, 2007. And, in support of her worsening medical condition, the applicant's spouse states, "... I had two miscarriages in 2006 due to undue stress relating to [the applicant's] possible deportation." *Letter of Support from* [REDACTED] *supra*; *see Letter of Support from* [REDACTED] Ph.D., P.C., dated October 15, 2007 (indicating that the applicant's spouse underwent a miscarriage in 2006 and again in 2007 in part because of high levels of stress).

The applicant through counsel also submitted a letter from his spouse's psychotherapist, indicating that his spouse has been diagnosed specifically with Major Depressive Disorder, Single Episode (296.23 DSM-IV TR), based on her symptoms of a depressed mood, insomnia, disruption of appetite with weight loss, disruption of concentration, feelings of helplessness and hopelessness, and recurring suicidal ideation; all resulting from thoughts of the applicant's possible removal from the United States. *Letter of Support from* [REDACTED], dated May 21, 2009. Further, the psychotherapist indicates that the applicant's spouse's separation from the applicant or relocation with the applicant to Pakistan would severely affect the applicant's spouse by deepening her depression and deteriorating her ability to function; so much so that the applicant's spouse could become suicidal. *Id.*

Moreover, the psychotherapist indicates, "[The applicant's spouse's] depression is pervasive enough that it is adversely affecting all aspects of her life. The disruption of her ability to concentrate and pay attention has significantly effected [sic] her functioning, at work as a financial analyst, and in her studies for a degree in finance." *Id.* And, in support of the contention that his spouse's increasingly depressive mood has impacted her professional work and academic studies, the applicant through counsel submitted a letter from his wife's employer, indicating that his wife has received a written warning for ongoing performance issues and that further corrective action such as termination of employment may be taken: "[The applicant's spouse] [n]eeds to develop a greater degree of analytical understanding and value-added insights in the performance of her tasks ... [The applicant's spouse] does not perform nearly the workload that is expected of her as an analyst. Moreover, [she] does not demonstrate the capacity to work independently to get tasks done which is a burden on other more senior members of the team ... [She] [h]as not yet committed to corporate-sponsored training ... in order to enhance her MS Office skills, which remain below a reasonably-acceptable level of proficiency ..." *Written Warning issued by JP Morgan Chase*, dated March 26, 2008. The AAO finds that the record does not establish that the applicant's spouse's poor work performance is a result of the applicant's spouse's diagnosis of Major Depressive Disorder and aggravating symptoms, and thereby, a contributing factor to the applicant's spouse's extreme medical hardship. The record only contains general statements about the applicant's spouse's lack of work performance competencies. And, there is nothing in the

record to indicate that the lack of the necessary competencies is a direct result of the applicant's spouse's illness.

However, the AAO finds that the record is sufficient to establish that the applicant's spouse would endure significant medical hardship due to the applicant's inadmissibility. Medical documentation has been provided that the applicant's spouse suffers from Major Depressive Disorder and that constant thoughts and worry of the applicant's removal from the United States and resulting separation from the applicant has aggravated the applicant's spouse's illness, manifesting into thoughts of suicide. The medical documentation also evidences that the applicant's presence likely would alleviate the stress factors that affect the applicant's spouse due to her illness, and would result in a positive impact on her overall well-being.

Additionally, the applicant through counsel states that his spouse would suffer extreme financial hardship if the applicant were removed from the United States: "[The applicant's spouse] has also said that without [the applicant's] limited income, [the applicant's spouse] would find it extremely difficult to provide for the family and study." *I-290B Brief in Support of Appeal, supra*. And, the applicant's spouse states, "If I were to become a single parent, this would mean that I would have to leave my son in the care of a stranger while I work to provide for our family. Moreover, on my income[,] there is just no way that I could afford a babysitter/nanny ... the entire burden of providing for the family falls on my shoulders ... [the applicant] feels extremely frustrated that he is not able to provide more financially ... Without [the applicant's] income, I could support my family for a short period of time with my own income. However, there is little room for unexpected expenses let alone non-budget items or savings. Childcare and the loan payment alone consume a substantial portion of my income ... but I also need this job because it is the only steady source of income that our family has ... Without [the applicant] being able to financially provide for our family, I will be unable to continue my education." *Letter of Support from [REDACTED] supra*. In support of the financial hardship that his spouse would endure, the applicant through counsel submitted a letter from his previous employer, indicating that he drove a New York City taxi cab for L&M Management II Corporation from September 2004 until December 12, 2007 and maintained good standing to return to the same employment. *Letter of Support from [REDACTED] Manager*, dated April 2, 2008. And, the applicant through counsel submitted a letter from his spouse's employer, indicating that his spouse works as a Business Management Analyst for JP Morgan Chase since March 19, 2001, with an annual base salary of \$40,000.00. *Letter of Support from [REDACTED]* dated May 30, 2008. Also, in support of the financial hardship, the applicant through counsel submitted joint bank account statements, indicating numerous fees accrued for conducting transactions when the accounts had insufficient funds. *Chase Premier Checking Account Statements*, dated October 18 – November 19, 2003 and April 17, 2008 through May 16, 2008; *see ING DIRECT Savings Account Statements*, dated February 28, 2007 and March 31, 2008. And, the applicant through counsel submitted numerous copies of cancelled checks and credit card account statements, evidencing payments made to various creditors and utilities companies. *See Copies of Cancelled Checks Account Statement*, dated October 18 – November 19, 2003; *see also Chase Credit Card Account Statements*, dated July 21, 2005 – August 19, 2005 and April 20, 2008 – May 19, 2008. Additionally, the applicant through counsel submitted evidence of his and his spouse's residential

mortgage. *See Recording and Endorsement Cover Page for the NYC Department of Finance Office of the City Register*, dated March 12, 2007; *see also Consolidated Mortgage Agreement*, dated February 5, 2007.

The financial documentation indicates that the applicant's spouse is the primary financial provider for the applicant, his spouse and their son, and that the applicant's financial contribution is *de minimis*. However, the AAO recognizes that the applicant's spouse will endure financial hardship as a result of separation from the applicant.

The record reflects that the cumulative effect of the medical hardship that the applicant's spouse is experiencing due to her husband's inadmissibility when considered with the financial hardship, the difficulties associated with raising her son on her own, and her concern for her son's wellbeing, rises to the level of extreme. The AAO thus concludes that were the applicant's spouse to remain in the United States without the applicant due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

The applicant through counsel states that his spouse not only will endure extreme hardship upon separation from the applicant, but also will endure extreme hardship if she were to relocate to Pakistan to be with the applicant because of various factors: she and the applicant's son are U.S. citizens; she is an ethnic Indian; the U.S. Department of State has issued a travel warning, advising Americans not to travel to Pakistan because of threats directed at Americans; and she would have to abandon her parents, whom she has provided emotional, financial, and physical support. *See I-290B Brief in Support of Appeal, supra*. The record establishes that the applicant's spouse was born in Trinidad and Tobago and naturalized in the United States, and she does not have immediate family or social ties to Pakistan. She lives with the applicant, their U.S. citizen son, and her legal permanent resident parents. Her legal permanent resident sibling also lives in the United States. She would have to leave her family and community; including her elderly parents for whom she has been providing daily support because of the elderly mother's health-related concerns. *See Letter of Support from [REDACTED]*, dated May 22, 2009.

Further, the AAO notes that in its Travel Warning for Pakistan, the U.S. Department of State Bureau of Consular Affairs states, "... Threat reporting indicates terrorist groups continue to seek opportunities to attack locations where U.S. citizens and Westerners are known to congregate or visit, such as shopping areas, hotels, clubs and restaurants, places of worship, schools, or outdoor recreation events ... U.S. citizens have been victims of attacks in the last few years ... U.S. citizens throughout Pakistan have also been kidnapped for ransom or for personal reasons ... The Embassy reiterates its advice to all U.S. citizens to take measures for their safety and security at all times. These measures include maintaining good situational awareness, avoiding crowds, and keeping a low profile. The Embassy reminds U.S. citizens that even peaceful demonstrations may become violent and advises U.S. citizens to avoid demonstrations. U.S. citizens should avoid setting patterns by varying times and routes for all required travel. U.S. citizens should ensure that their travel documents and visas are valid at all times. Official Americans are instructed to avoid use of public transportation and restrict their use of personal vehicles in response to security concerns."

http://travel.state.gov/travel/cis_pa_tw/tw/tw_5540.html. [last visited Sep. 27, 2011]. Thereby, as a naturalized U.S. citizen who is unfamiliar with any regional languages used in Pakistan taken in conjunction with the threats directed at U.S. citizens, the applicant's spouse's concerns for her safety if she were to relocate there are noted.

The applicant's spouse's lack of immediate family and social ties in Pakistan, separation from her family in the United States, and the fear for her safety as a U.S. citizen if she were to relocate to Pakistan, establishes that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)

...

Id. at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; letters of support evidencing the applicant and his spouse's contributions to the community through charitable donations; letters of support from an imam, neighbors, and friends, attesting to the applicant's good moral character; and no evidence of criminal convictions. *See Letter of Support from* [REDACTED], dated October 10, 2006; *see also Letter of Support from* [REDACTED], dated June 9, 2007; *Letter of Support from* [REDACTED] dated April 2, 2008; *Letter of Support from* [REDACTED], dated April 1, 2008; *Letter of Support from* [REDACTED], dated April 1, 2008; *Letter of Support from* [REDACTED] dated April 1, 2008; *Letter of Support from* [REDACTED], dated April 1, 2008; and *Letter of Support from* [REDACTED], dated April 1, 2008. The unfavorable factors include: the applicant's attempted entry into the United States and presentation of a fraudulent passport upon inspection by an immigration official.

Although the applicant's violation of immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained. However, the AAO notes that the applicant is still inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), as an

alien previously ordered removed from the United States, and therefore, still requires permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii)².

ORDER: The appeal is sustained. The application is approved.

² The record establishes that U.S. immigration officials apprehended the applicant in his home on or about December 13, 2007, pursuant to an outstanding order of exclusion issued by the Immigration Judge in or around 1995. The applicant through counsel filed a motion to reopen exclusion proceedings on or about December 19, 2007, but the Immigration Judge denied the applicant's motion on or about January 7, 2008. The applicant through counsel appealed the denial of his motion, and the BIA affirmed the Immigration Judge's denial on or about February 29, 2008. The applicant filed a petition for review of the BIA's decision, and on or about October 23, 2008, the United States Court of Appeals for the Second Circuit denied the applicant's petition for review.