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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: Office: ROME, ITALY
SEP 08 2011

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Pakistan who misrepresented his previous entries into the United States when applying for a visa in 2002. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant has a U.S. citizen spouse and five children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

Initially, the applicant was deemed inadmissible pursuant to section 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E), by inspection officers in San Francisco, California and the Field Office Director in Islamabad, Pakistan, for having attempted to smuggle a 17 year old minor into the United States. However, the District Director, Rome, Italy withdrew the finding of § 212(a)(6)(E) inadmissibility, instead finding the applicant inadmissible pursuant to section 212(a)(6)(C)(i) for having misrepresented his previous trips to the United States. *Decision of the District Director*, dated March 31, 2009. The District Director found that the applicant had failed to establish that his spouse would experience extreme hardship to a qualifying relative, his U.S. citizen spouse, and denied the waiver application accordingly.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) because his application was completed by someone else and he was unaware that they had incorrectly listed his previous trips to the United States. Brief in Support of Appeal, received May 31, 2009. In addition, counsel for the applicant asserts that the applicant's spouse will suffer extreme hardship if the applicant is excluded from the United States.

The record contains, but is not limited to: statements from counsel; statements from the applicant's wife; a letter from [REDACTED] a letter from [REDACTED] and documents previously submitted to address the finding of inadmissibility under section 212(a)(6)(E) of the Act. The entire record was reviewed and considered in rendering this decision.

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

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 provided false information on his visa application submitted to the U.S. consulate in Islamabad, Pakistan in December, 2002. Specifically, the applicant failed to list his prior entries into the United States and failed to indicate that he had been previously refused admission to the United States when attempting to enter on July 18, 2001.

On appeal, counsel states that the applicant was assisted by another person in preparation of his visa application, that the preparer made errors in completing the visa application and that, when the applicant was questioned about his visa application during his interview, he advised the consular officer that he had previously been to the United States. The record contains a letter from [REDACTED] which states that errors were made in completing the visa application for the applicant in December, 2002. The record also contains a copy of the visa application submitted by the applicant in December, 2002. The application bears the applicant's signature. In signing the visa application, the applicant attested that the statements made therein were "true and complete to the best of my knowledge and belief." Therefore, even if the visa application had been prepared by someone other than the applicant, the applicant is responsible for the truth of the matters asserted therein.

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 AAO therefore finds that the applicant, in failing to disclose his prior entries into the United States, and particularly in failing to disclose his prior refusal of admission to the United States on July 18, 2001, made a willful misrepresentation.

The AAO further finds that the applicant's misrepresentation was material. In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting; to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now United States Citizenship and Immigration Services) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

As noted above, the applicant failed to disclose to the consular officer that he had been refused admission to the United States on July 18, 2001. The record reflects that the applicant was refused admission to the United States on July 18, 2001 pursuant to section 212(a)(6)(E) of the Act, as he was accompanied by a minor who was in possession of a false passport.

The AAO finds that the applicant's July 18, 2001 refusal of admission to the U.S. was relevant to the alien's eligibility and may well have resulted in a proper determination that he be excluded. Thus,

the applicant's misrepresentation regarding his attempted entry on July 18, 2001 was material. Therefore, the AAO finds that the applicant is inadmissible to section 212(a)(6)(C) in that he made a willful misrepresentation of a material fact in seeking to procure a visa.

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

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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).

Counsel states that the applicant’s spouse’s brother and sister are currently residing in the United States and that the only close relative that the applicant’s spouse has in Pakistan is the applicant himself. Counsel also states that the “political, economic and security situation in Pakistan is extremely perilous” and that “the level of deterioration in Pakistan in every aspect of life has been very drastic in the last few years.”

Although the applicant’s spouse may prefer to live in proximity to her siblings, and separation from her siblings may cause some hardship, the record does not reflect that the hardship experienced by the applicant’s spouse as a result of separation from her siblings would rise to the level of extreme. In this regard, the AAO notes that there is no evidence that the applicant’s spouse would be unable to return to the United States to visit her siblings or that her siblings would be unable to travel to Pakistan. With respect to conditions in Pakistan, the AAO notes that the Department of State issued a Travel Warning for Pakistan on August 8, 2011. (Available online at http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html, last accessed September 1, 2011.) The Travel Warning states that the “presence of al-Qaida, Taliban elements, and indigenous militant sectarian groups poses a potential danger to U.S. citizens throughout Pakistan”; “U.S. citizens throughout Pakistan have been arrested, deported, harassed, and detained for overstaying their Pakistani visas or for traveling to Pakistan with the inappropriate visa classification”; and that “U.S. citizens throughout Pakistan have also been kidnapped for ransom or for personal reasons.” The AAO notes that the conditions in Pakistan may be challenging. However, the AAO also notes that there is no evidence that the applicant’s spouse or family has been or would be specifically targeted in Pakistan. The AAO further notes that the applicant’s spouse is a native in Pakistan and that the

record indicates that the applicant is self-employed in Pakistan and is able to support both himself and his family in the United States. Based on the foregoing, the AAO finds that the applicant has failed to establish that his spouse would suffer extreme hardship should she relocate to Pakistan.

The applicant's spouse states that separation from the applicant has caused hardship on her and her children. She states that the absence of the applicant has caused financial difficulties as the applicant is the only income earner and must support both himself and his family in the United States. The applicant's spouse states that she has never worked outside the home and does not have the skills and experience necessary to obtain employment. She further states that it would be impossible for her to work and to take care of her children. However, the record does not contain any documentation showing the applicant's income or the applicant's or his spouse's living expenses or financial obligations. In the absence of such evidence, the AAO cannot conclude that the applicant's spouse would face any significant financial hardship as a result of separation from the applicant.

Counsel states that the applicant's spouse is "facing extreme hardship in raising her kids in a divided home with the kid's father absent. All kids are in the formative period of their life and need mother and father both at this critical time of their life." The applicant's spouse has stated that her children "are at a great disadvantage because of the absence of their father" and that "[t]his deprivation is creating a sense of loss, helplessness and lack of full family support to them." In addition, counsel has submitted a letter from [REDACTED] in which [REDACTED] state that he "perceived signs of depression in [the applicant's spouse] and at least two of her children." However, the letter is not detailed and fails explain what "signs of depression" were perceived or the nature and severity of those signs. Therefore, the AAO finds that the letter from [REDACTED] fails to establish that the applicant's spouse is experiencing emotional hardship that goes beyond that which is normally experienced by family members of inadmissible aliens.

While the AAO acknowledges that acting as a single parent is difficult, the applicant has not shown that his children would create a burden on his wife that elevates her difficulties to an extreme level. The AAO notes that Dr. Batrice indicated that the applicant's spouse resides with her sister. Thus it appears that the applicant's spouse may have some assistance in caring for her children. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife will suffer extreme hardship if his waiver application is denied and she remains in the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if he is refused admission. The AAO recognizes that the applicant's would benefit from the applicant's financial support and physical presence, but these assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant

has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.