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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services

[REDACTED]

H5

DATE: **APR 03 2012** OFFICE: OAKLAND PARK FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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.

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,


for Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Pakistan. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented a material fact on two occasions, once in order to obtain admission to the United States and again to procure a visa to the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen husband. The applicant was also ordered removed pursuant to INA § 235(b)(1), 8. U.S.C. § 1225(b)(1) on March 13, 2001.

On July 11, 2009, the Field Office Director concluded that the applicant failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her United States citizen husband, and denied the application accordingly.

On appeal, counsel for the applicant states that the applicant may not be inadmissible and that, in the case that she is, her qualifying relative will suffer extreme hardship.

In support of the application, the record contains, but is not limited to, a brief from counsel for the applicant, letters from the applicant's family members in the United States, biographical information for the applicant's family members in the United States, two mental status & psychological evaluations of the applicant's spouse, documentation concerning the applicant's spouse's physical health, limited bank and insurance documentation for the applicant and her spouse, country conditions information regarding Pakistan, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal. The AAO will first address the question of whether the applicant is admissible to the United States.

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.

A misrepresentation is generally material only if by making it the alien received a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal,

and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. 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 (BIA 1960; AG 1961).

"It is not necessary that an 'intent to deceive' be established by proof, or that the officer believes and acts upon the false representation," but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)). The record is clear that the applicant attempted to enter the United States on March 13, 2001 using a fraudulent passport. As a result, the applicant was found to be inadmissible to the United States under INA § 212(a)(6)(C)(i) and was ordered removed pursuant to INA § 235(b)(1). The applicant's signature appears on the Record of Sworn Statement of Proceedings (Form I-867) indicating that she was aware of her inadmissibility and the reasons for her removal. To the extent that counsel contends that the applicant made a timely retraction of her use of the fraudulent document in secondary inspection, the doctrine of timely retraction requires that the retraction be made "voluntarily and without prior exposure of [the] false testimony." See *Matter of R-R-*, 3 I&N Dec. 823, 827 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). In this case, the applicant had already presented the fraudulent document to immigration authorities and the use of the fraudulent document was discovered prior to the applicant's admission in secondary inspection that she was not in fact the individual she presented herself to be on the false passport.

Inadmissibility under INA § 212(a)(6)(C)(i) is a permanent grounds of inadmissibility. The applicant's subsequent actions in applying for and obtaining a nonimmigrant visa to enter the United States using her maiden name, and failing to disclose her removal order and inadmissibility under INA § 212(a)(6)(C)(i) on application, also constitute a material misrepresentation as they tended to shut of the line of inquiry material to the applicant's eligibility for the nonimmigrant visa. The applicant remains inadmissible under INA § 212(a)(6)(C)(i).

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 in this case is the applicant's U.S. citizen husband. Hardships to the applicant or her children are not directly relevant under the statute and will be considered only insofar as hardship to them results in hardship to the applicant's spouse. 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).

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 qualifying relative is the applicant’s U.S. citizen husband. The applicant’s spouse states that he will suffer emotional, physical, and financial hardship if the applicant is not admitted as a U.S. lawful permanent resident. In regards to the financial hardship, the applicant’s spouse states that his business relies on the applicant to handle clerical work and client concerns. No evidence, however, is provided in regards to the applicant’s spouse’s business, the applicant’s role in working for his business, or any detrimental effects the business suffered previously when he could not rely on the applicant’s assistance. The applicant’s spouse also states that he would suffer emotional hardship due to his guilt in regards to the applicant’s immigration status. The record contains two letters from mental health professionals, both prepared in the month following the denial of applicant’s waiver of inadmissibility. The psychological evaluation prepared by [REDACTED] states that the applicant’s spouse is severely depressed and that the depression is a result of his wife’s immigration status. [REDACTED] does not state the time and extent of his evaluation of the applicant’s spouse’s mental health. He does note, however, that he believes that the applicant’s spouse is at risk for developing a serious illness. The record also contains a letter from [REDACTED] states that the applicant’s spouse reported suffering from panic attacks, chest discomfort, trembling, numbness, tingling in his feet, sweating and dizziness. [REDACTED] also concludes that the applicant’s spouse is very depressed and that he is at risk for illness or injury. Neither of the mental health professionals indicate that the applicant’s condition has affected his professional or personal responsibilities, nor do they recommend any course of treatment for the applicant’s spouse. Based on the information provided, it is not possible to conclude that the emotional effects suffered by the applicant’s spouse exceed the common results of separation due to immigration inadmissibility.

Moreover, in regards to the applicant's spouse's physical health, the applicant's spouse has submitted a letter from [REDACTED] stating that he believes "the patient's history suggests the possibility of neuropathy disease." Additionally, [REDACTED] states that the applicant's spouse suffers from Neuropathy. [REDACTED] states that the diagnosis "would make it pretty difficult for the patient to be alone as his disease may be progressive." The record also indicates that the applicant's spouse has suffered from a thyroid problem and prostate enlargement. In regards to his hyperthyroid disease, [REDACTED] states that the applicant is on "replacement medication." The other diagnoses made in the medical records submitted do not indicate that the applicant's spouse is currently receiving any course of treatment for those conditions. Additionally, while the applicant's spouse's condition may deteriorate, it is not clear from the record that he currently requires any special assistance in order to carry out his normal daily functions. Although the applicant's two adult children do not reside in Florida, it is not clear from the record that they would be unable or unwilling to care for their father in their mother's absence. The applicant states that her daughter travels frequently to Florida to assist her mother. Although the AAO recognizes the significance of family separation as a hardship factor, and recognizes that the applicant's spouse is suffering emotional hardship due to the applicant's inadmissibility, the applicant has not met her burden of proof to document that the hardship her spouse faces is extreme in nature.

The applicant's spouse also states that he would suffer extreme hardship should he relocate to Pakistan with his spouse. The primary hardship claimed by the applicant's spouse due to relocation is the loss of his business, his income, and his ability to support his family. The applicant's spouse, however, has provided no evidence of his business or current financial situation. Although the AAO takes note of the country conditions in Pakistan, and the applicant's spouse's long residence in the United States outside of his native Pakistan, it is not possible to make the determination that the applicant's spouse would suffer financial hardship there based on the evidence in the record. Additionally, no evidence has been submitted to indicate that the applicant's spouse is undergoing any medical treatment in the United States beyond thyroid replacement medication. Nor is there any documentary evidence in the record that thyroid replacement medication is unavailable in Pakistan or that the applicant's spouse's other conditions would not be treatable in Pakistan. Moreover, the applicant's spouse has two adult children that reside in the United States. The record indicates that those children reside in different areas of the country and there is no indication or documentary evidence to illustrate the frequency in which the applicant's spouse is in contact with his children. It is not possible from the record to determine that the applicant's spouse would suffer emotional hardship if he were to depart the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she 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. 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.