

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: **DEC 10 2012**

Office: SANTA ANA

IN RE: Applicant: [REDACTED]

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,

*Maria Feh*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Santa Ana, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is sustained. The waiver application is approved.

The record reflects that the applicant is a native of Pakistan and citizen of Iran 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 attempted to obtain a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. Specifically, the applicant attempted to procure entry to the United States in October 2000 by presenting a fraudulent passport. 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 his U.S. citizen mother.

The field office director concluded that the applicant had 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. *Decision of the Field Office Director*, dated May 3, 2011.

In support of the appeal, counsel for the applicant submits the following: a brief; declarations and letters from the applicant and his mother; medical and mental health documentation pertaining to the applicant's mother; and country conditions documentation pertaining to Iran and Pakistan. The entire record was reviewed and considered in rendering this decision.

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.

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.

On appeal, counsel maintains that the applicant is not subject to section 212(a)(6)(C)(i) of the Act. To begin, counsel notes that the applicant used the fraudulent passport to leave the place of his origin, not to enter the United States. Counsel further contends that the applicant disclosed that the

passport was counterfeit to the officer at the airport. Counsel asserts that the disclosure by the applicant that the passport was counterfeit amounted to a timely retraction which would serve to purge a misrepresentation. *See Brief in Support of Appeal*, dated June 24, 2011. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Pursuant to the record, the applicant attempted entry to the United States by presenting a fraudulent Netherlands passport. He also completed the Form I-94W, Arrival Record, stating that his country of citizenship was the Netherlands. Thus, despite counsel's assertion, the applicant did in fact use the fraudulent passport and identity to attempt to procure entry to the United States. Moreover, with respect to counsel's assertion that the applicant made a timely retraction of his misrepresentation, the record does not establish that the applicant admitted the fraudulent nature of his passport at first opportunity. Based on the immigration officer's suspicion that the passport was fraudulent, the applicant was referred to secondary inspection. It was at that point that the applicant admitted that the fraudulent passport had been purchased by his mother and provided his true identity and requested asylum. *See Record of Sworn Statement in Proceedings*, dated October 19, 2000. Thus, it has been established that the applicant willfully misrepresented by presenting a fraudulent document when he attempted entry to the United States in October 2000. He is thus subject to section 212(a)(6)(C)(i) of the Act.

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. The applicant's U.S. citizen mother is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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-Moralez*, 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 applicant's U.S. citizen mother asserts that she will suffer emotional, physical and financial hardship were she to remain in the United States while the applicant relocated abroad due to his inadmissibility. In a declaration, the applicant's mother explains that she has been residing with the applicant since she came to the United States in 2001 and relies on him for her daily care and survival. She contends that she suffers from numerous medical conditions, including Diabetes Mellitus, Hypertension, Hyperlipidemia, Degenerative Joint Disease and has had surgeries for hernia and glaucoma. The applicant's mother maintains that the applicant is the only one who can take care

of her. She references that the applicant helps her with feeding, dressing, taking her to the doctor, shopping for groceries, prescriptions and other supplies, monitoring her blood sugar levels and all in all providing her with daily care. *Declaration of Noor J. Sayyahi*, dated June 20, 2011.

In support, a letter has been provided from the applicant's mother's treating physician, [REDACTED] [REDACTED] notes that the applicant is her main caregiver and his presence is crucial and required to provide daily care for her. [REDACTED] concludes that without the applicant's daily presence and supervision, the applicant's mother may suffer grave consequences, including stroke or diabetic ketoacidosis requiring hospitalization or nursing home placement. *See Letter from Simin Torabzadeh, M.D., University of California, Irvine-Healthcare*, dated May 16, 2011. In addition, documentation establishing the numerous medications taken by the applicant's mother has been submitted. Moreover, a letter has been provided from [REDACTED] confirming that the applicant's mother has been suffering from numerous ophthalmic problems since August 2010 and the applicant has been her caretaker and translator. *See Letter from Marjan Farid, M.D., Gavin Herbert Eye Institute*, dated May 24, 2011.

The record establishes that the applicant's mother is in her early 70s. She has been residing with the applicant since entering the United States in 2001 and relies on him for her daily care and survival. Based on a totality of the circumstances, and in light of the applicant's mother's age and numerous medical conditions, it has been established that she would experience extreme hardship were her son to relocate abroad as a result of his inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's mother asserts that were she to relocate to Iran, the government would arrest her and put her in prison with her son. She further contends that she would not be able to get the medical care she needs and would die. *Supra* at 2. Counsel has submitted documentation establishing that medical facilities in Iran do not meet U.S. standards. *See Country Specific Information-Iran, U.S. Department of State*, dated July 16, 2012. Substandard medical care is also prevalent in Pakistan, the applicant's birth place. *See Country Specific Information-Pakistan, U.S. Department of State*, dated August 31, 2012. In addition, the AAO notes that the U.S. Department of State has issued Travel Warnings for Iran and Pakistan. *Travel Warning-Iran, U.S. Department of State*, dated April 27, 2012 and *Travel Warning-Pakistan, U.S. Department of State*, dated September 19, 2010. It has thus been established that the applicant's mother would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957)*.

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen mother would face if the applicant were to relocate abroad, regardless of whether she accompanied the applicant or remained in the United States, gainful employment in the United States, community ties, support letters, and the apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's fraud and/or willful misrepresentation, as outlined above.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The waiver application is approved.