

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



H5

Date: **DEC 14 2012**

Office: NEW DELHI, INDIA

FILE: 

IN RE:

Applicant: 

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

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, New Delhi, India. 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 for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant's wife has had polio since she was three years old and has always been dependent on others as a result.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. ■■■ indicating they were married on March 19, 1994; letters and an affidavit from Ms. ■■■ letters from Ms. ■■■ physician; affidavits from Ms. ■■■ parents and siblings; numerous letters and affidavits of support; a psychological evaluation of Ms. ■■■ a copy of the U.S. Department of State's International Religious Freedom Report for Pakistan and other background materials; and photographs of Ms. ■■■ leg and leg brace. 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 . . . .

In this case, the record shows that the applicant attempted to enter the United States in November 2000 using a stolen Pakistani passport with a substituted photograph. According to counsel, the applicant "hired an agent to assist him with his visa application, who provided him with a stamped passport. The applicant did not have any knowledge of fraud or misrepresentation or tampering with the passport." Counsel contends the applicant was victimized by the agent and had no intention of committing fraud or any misrepresentation. in which the applicant states he got the passport from a travel agent in Karachi, that his father paid the travel agent, and that he knew nothing about the documents.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds that the applicant has not met his burden of proving he is admissible to the United States. The record contains the applicant's sworn statement, dated November 25, 2000, in which he continued to use the name on the stolen passport. He also indicated he was married, though he stated a different name from that of his current wife, to whom he was married at the time. This clearly shows that the applicant was aware that the passport was not his and not legally obtained. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act 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-I-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's wife, Ms. [REDACTED] states that she has suffered from Polio in her lower left leg since the age of three. She states that because of her disability, she has always been verbally abused and humiliated by peers and relatives when she lived in Pakistan. According to Ms. [REDACTED], she could not complete school in Pakistan due to her disability and has faced hardship in all aspects of her life. She states she uses braces on her left leg and cannot balance her body without her brace; however, when she keeps her braces on for longer periods of time, her leg gets swollen and becomes painful. Ms. [REDACTED] states she is dependent on others for everyday tasks. She states that her husband used to help her take a shower, change her clothes, put on her shoes, and helped her for the most private moments, including using the restroom during her monthly cycle. She states she cannot drive, is

unable to find a job, and has no one to support her permanently except her husband. Ms. ■■■ contends she came to the United States in 2009 with the hope that her husband would join her once his case was processed. According to Ms. ■■■ she came to the United States because conditions in Pakistan got so bad that she was forced to stay inside the house and was unable to go to her doctor for therapy sessions. She states that since arriving in the United States, due to her disability, she has been forced to live from one house to another. Ms. ■■■ contends that when she first arrived in the United States, her family helped her, gave her shelter, and supported her. She states she first stayed at her brother's house, then moved to her sister's house, then moved in with her parents, then moved back to her sister's house, and then back to her brother's house. She states that her presence and her dependency on others is a burden on everyone. She states she is currently sharing a one-bedroom apartment with two friends and that they are the only source of shelter for her. She states her friends do not charge her rent and lend her money for her personal needs. Ms. ■■■ states she feels helpless, shattered, emotionally broken, and is losing her mind. She contends that no one is able to keep her or support her for longer periods of time and that because she has "overused" herself, she now has regular pains in her leg that requires therapy and treatment. She states that she has relied on friends and relatives for everything in her life, but that no one understands her needs and takes care of her the way her husband does. She states that this is her second marriage and that her first husband abused and mistreated her due to her disability. Furthermore, Ms. ■■■ contends she can go back to Pakistan, but that life there was even harder and she would suffer extreme hardship given the changed country conditions in Pakistan and the deteriorating condition of her leg which causes her constant pain.

After a careful review of the entire record, the AAO finds that if Ms. ■■■ remains in the United States without her husband, she would suffer extreme hardship. The record contains ample documentation showing that Ms. ■■■ has had Polio since childhood and has been dependent on others her entire life. Letters from her physician state that she has severe muscle atrophy on her left leg, needs a brace for any mobility, has extremely limited capability to ambulate, takes pain medication to prevent and treat swelling joints, and that without treatment, daily medication, and regular follow up, her leg may get damaged more, making her totally dependent on others. The physician states she needs supportive care for daily living, including bathing, grooming, meal preparation, going up and down stairs, and getting into and out of a car. In addition, the record contains a psychological evaluation diagnosing Ms. ■■■ with Major Depressive Disorder, severe, and Adjustment Disorder with Mixed Anxiety and Depression, chronic. The evaluation states that Ms. ■■■ had previously had an episode of depression as well as suicidal ideation during her first marriage in which she was physically and mentally abused. The evaluation also states that Ms. ■■■ has a fourth grade education and quit school due to verbal abuse by peers. Moreover, the record contains letters from family members, all of whom describe the difficulties Ms. ■■■ has experienced throughout her life due to her disability, including her inability to finish school, the hardship of performing even simple chores, and the need for her to have her husband take care of her. Letters from Ms. ■■■ two current roommates corroborate her claim that her family members are unable to provide for her, that she needs help doing simple things, such as taking a shower, sitting down if she is standing up or standing up when she is sitting down, and that even with Ms. ■■■ leg brace on, she still needs help walking. Considering these unique circumstances cumulatively, the AAO finds

that the hardship Ms. ■■■ would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if Ms. ■■■ returned to Pakistan to be with her husband, she would experience extreme hardship. As stated above, Ms. ■■■ has been diagnosed with Polio as well as Major Depressive Disorder and Adjustment Disorder. The AAO recognizes that returning to Pakistan would disrupt the continuity of her health care and takes administrative notice that the U.S. Department of State recognizes that accessibility for individuals with disabilities is not comparable to that of the United States and that medical facilities vary such that U.S. citizens may find services and cleanliness below U.S. standards. *U.S. Department of State, Country Specific Information, Pakistan*, dated August 31, 2012. The AAO also acknowledges that a Travel Warning has been issued for Pakistan, describing the ongoing security concerns in Pakistan, including terrorist attacks on civilian, government, and foreign targets. *U.S. Department of State, Travel Warning, Pakistan*, dated September 19, 2012. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Ms. Ali faces extreme hardship if the applicant 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 factors in the present case include 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 wife and her family members; the extreme hardship to the applicant's wife if he were refused admission; numerous letters of support in the record describing the applicant as a very supportive husband who cares of all of his wife's needs; 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.