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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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#15



DATE: **JAN 18 2012** Office: NEW YORK, NY

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:

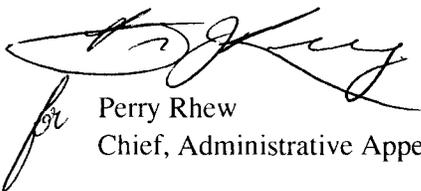


INSTRUCTIONS:

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 must 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, New York, New York. The District Director also denied the applicant's subsequent Motion to Reopen and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States.

The District Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated April 13, 2009. The District Director also denied the applicant's Motion to Reopen after determining that the new evidence submitted by the applicant was insufficient to establish extreme hardship. *Decision of the District Director*, dated June 29, 2009.

On appeal, counsel asserts that the District Director's denial of the applicant's motion was arbitrary, capricious and an abuse of discretion. Counsel contends that the District Director did not address the issues raised in the Motion to Reopen and that the applicant has met her burden of establishing that a denial of her waiver request would result in extreme hardship to her U.S. citizen spouse. *Form I-290B, Notice of Appeal or Motion*, dated July 23, 2009; *see also, Memorandum from counsel*.

The record includes, but is not limited to, statements from counsel; statements from the applicant, her spouse and her daughter; a statement of self-employment from the applicant's spouse; copies of individual income tax returns for the applicant and her spouse, a statement of tax payments from the Internal Revenue Service (IRS); and country conditions information on Pakistan. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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.

The AAO does not find the evidence of record to establish that the applicant's use of a passport in her maiden name violated section 212(a)(6)(C)(i) of the Act, but we do find the record to demonstrate that the U.S. nonimmigrant visa in the applicant's passport had been altered. The record indicates that when questioned at the port of entry, the applicant's spouse acknowledged these alterations and indicated that he had arranged for them to be made when applications for new U.S. visas were refused. The record also reflects that the applicant was denied admission and was placed in removal proceedings. On April 12, 1988, an immigration judge ordered the applicant excluded and deported to Pakistan. On April 16, 1988,

the applicant was removed to Pakistan pursuant to the order of the immigration judge. In presenting an altered visa to an immigration official, the applicant attempted to procure entry into the United States through fraud or the willful misrepresentation of a material fact and is barred from admission pursuant to section 212(a)(6)(C)(i) of the Act.

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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 United States Citizenship and Immigration Services (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).

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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

In support of the appeal, counsel states that the applicant’s spouse is a United States citizen, and that he has significant ties to the United States in that his five children (one United States citizen and four Lawful Permanent Residents) all reside in the United States. He also contends that it will be extremely dangerous for the applicant’s spouse to relocate with the applicant to Pakistan because of the presence of Al-Qaida and Taliban elements in Chakwal, the city to which the applicant would relocate and that these extremist groups target United States citizens for harm including murder.

In a statement dated April 27, 2009, the applicant states that she is concerned about the safety of her family in Pakistan because Islamic fundamentalists have taken over the country. The applicant states that in [REDACTED], where her mother resides, there have been repeated bombings and attacks by terrorists, and that the latest attack, on April 4, 2009, killed 35 people and injured hundreds. The applicant’s oldest daughter in a March 25, 2007 statement, indicates that she and her siblings have lived in the United

States for a long time, and would not be able to adjust to living in Pakistan with its strict views on religion and the curtailment of the rights of women. In his statement, dated September 22, 2008, the applicant's spouse indicates that his family has been living in the United States since 1996, and that his children are acclimated to the United States culture and milieu. He states that while his children understand Urdu, they are more fluent in English and will have difficulty adapting to the harsh culture in Pakistan.

In support of these claims, the record contains a Reuters news article reporting on a suicide bombing in the town of Chakwal, Pakistan that killed 22 persons and injured 35. The record also contains a United States Department of State Travel Warning, dated February 25, 2009, advising U.S. citizens against travel to Pakistan. The AAO notes that the U.S. Department of State continues to advise U.S. citizens against travel to Pakistan indicating that:

the presence of Al-Qaida, Taliban elements, and indigenous militant sectarian groups poses a potential danger to U.S. citizens throughout Pakistan. Threat reporting indicates terrorist groups continue to seek opportunities to attack locations where U.S. citizens and Westerners are known to congregate or visit....Terrorists have disguised themselves as Pakistani security personnel to gain access to targeted areas... U.S. citizens throughout Pakistan have been kidnapped for ransom or for personal reasons.

Travel Warning, U.S. Department of State, Bureau of Consular Affairs, Pakistan, dated August 8, 2011.

Having reviewed the record, the AAO finds the termination of the applicant's spouse's long-term residence in the United States; his significant familial ties to the United States, the security risks facing U.S. citizens in Pakistan, and hardships routinely created by relocation, when considered in the aggregate, to establish that the applicant's spouse would experience extreme hardship if he relocated to Pakistan to be with the applicant.

Counsel asserts that the applicant's spouse would experience financial hardship if he remains in the United States without the applicant. In a May 6, 2009, statement, counsel asserts that the applicant's spouse would have no ability to earn a living if she is returned to Pakistan and would be able to survive only with the financial support of her spouse, which would "put a severe financial drain upon [him]." In her April 27, 2009 statement, the applicant claims that her removal would result in great emotional pain and humiliation for her family. She states that the position of the woman in a Muslim family is extremely important, and that without her, her family may fall apart. She asserts that as a Muslim wife and mother, she is in charge of all family matters, that she makes decisions regarding the children and how they are raised, that she teaches her daughters about family modesty and her sons how to behave around girls and as young Muslim men. She also contends that it is important to her spouse that she remain in the United States to care for their children because if the children do not behave properly, he would "lose all respect in the Islamic Community."

In his statement dated September 22, 2008, the applicant's spouse maintains that he loves the applicant dearly, that she provides a home, care and love for the entire family, that she has taught the children modesty and how to be good citizens, and that without her, his family would fall apart. He states that

without the applicant, his children would not receive the guidance they need and would have no one to look after them when they are ill. The applicant's spouse indicates that if the applicant is removed from the United States, he and his children would be demoralized and "broken hearted or broken." In a March 25, 2007 statement, the applicant's oldest daughter asserts that the applicant is the "glue that holds [this] family together," and that the applicant cares for them and provides them with emotional support. She states that her father is deaf, that the applicant makes all decisions concerning the family and that without her, their family would fall apart and her younger siblings would not have anyone to care for them.

The AAO notes the claims made by counsel, the applicant and her family members regarding the impacts of separation, but does not find the record to support them. The record does not contain medical documentation e.g., medical records, that establishes the applicant's spouse is hearing impaired. Neither does it document that the applicant would need financial support from her spouse upon relocation to Pakistan or that such financial support would result in financial hardship for him. The record also fails to offer sufficient documentary evidence to demonstrate that the applicant's role as a Muslim wife and mother is critical to her spouse's acceptance in the Islamic community. Although the AAO notes an online article in the record on "Women in Islam. Role as Mother. Status of Mothers in Islam, Mothers..." accessed on April 29, 2009 from [REDACTED], this article, does not identify the author or the source of the information provided, does not establish the writer as an expert on the role of women in the Muslim family, and does not document the applicant's role in her family.

As to the claim of hardship to the applicant's children, we note that children are not qualifying relatives under section 212(i) of the Act and that any hardship to them must, therefore, be evaluated in terms of its impact on the applicant's spouse, the only qualifying relative in this case. However, other than the statements from the applicant, her spouse, her oldest daughter, and counsel, the record lacks any evidence that demonstrates the hardships that the applicant's children would suffer if separated from their mother or that these hardships would result in hardship to their father.

Accordingly, upon a review of the record, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and he continues to reside in the United States without the applicant.

Although the applicant has demonstrated that her spouse would experience extreme hardship if he relocated to Pakistan to reside with her, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to her spouse in this case.

As the record does not demonstrate that the applicant's spouse would suffer extreme hardship as a result of her inadmissibility, the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely 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.