

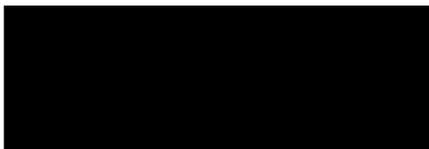
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Date: **MAY 03 2012**

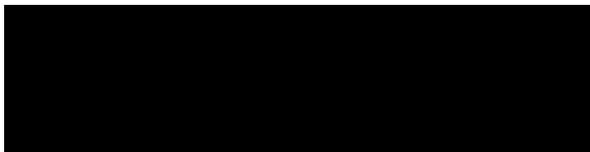
Office: PHILADELPHIA

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,

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Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 having procured admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen through whom he is eligible to seek adjustment of his status to that of permanent resident. The applicant contests this inadmissibility finding, but also seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director, September 11, 2009.*

On appeal, counsel for the applicant asserts that USCIS erred by applying the incorrect standard in finding that applicant had not met his burden of showing undue hardship to a qualifying relative. Counsel also contends that the applicant committed no fraud or misrepresentation either in procuring his U.S. visa or U.S. admission due to lack of willful, deliberate, or knowing action on his part.

In support of the appeal, counsel for the applicant submits a brief and supporting documentation including, but not limited to, copies of: financial information; his wife's statement; statements from the his wife's children and mother; letters of support; marriage and divorce certificates; a list of monthly expenses and receipts; a prescription bottle and medical records; photographs; a Travel Warning; and information about Pakistan. The record also contains the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), approved Petitions for Alien Relative (Form I-130), Applications to Register Permanent Residence or Adjust Status (Form I-485), and supporting documents. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

The [Secretary] may, in the discretion of the [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 [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 [...].

The applicant has disputed this inadmissibility, claiming that he never knowingly or intentionally made any misrepresentations and, in fact, only learned that his visa was fraudulent upon being detained when he sought U.S. admission; he explains that as a travel agency obtained the visa for him, he never interacted with a consular officer overseas and, similarly, never interacted with any U.S. officials at the Los Angeles International Airport due to the absence of a translator proficient in his native Urdu. The record indicates that the applicant used a fraudulent visa to procure admission to the United States, and the applicant has provided insufficient evidence to establish he did not knowingly present this fraudulent document.<sup>1</sup> Under section 291 of the Act, the burden of proving admissibility remains on applicants seeking admission to the United States.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 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

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<sup>1</sup> We note, too, that the record shows the applicant's B-2 visa to have been issued in Abu Dhabi, United Arab Emirates, but contains no explanation why the visa would have been issued outside of Pakistan, despite the applicant's admission never to have traveled outside the country before receiving from the agency a China visa and a U.S. visa.

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 qualifying relative in this case is his U.S. citizen wife. The record shows the applicant attempted to enter the United States on a B-2 visitor’s visa on January 18, 1991, and has not departed.<sup>2</sup> He filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on November 2, 2005, based on the Petition for Alien Relative (Form I-130) filed by his wife on May 20, 2005, and was found inadmissible for having sought to enter the country using a fake visa.

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<sup>2</sup> The record shows that an Advance Parole document issued to the applicant on October 23, 2001 (to visit his ill mother in Pakistan) was never used; the representation that he last entered the United States on parole on “4/21/2004” was, in fact, a typographical error where the correct date was “4/24/1991” (as shown on his I-94). USCIS deemed this discrepancy resolved, and we see no reason to revisit that factual determination.

The applicant demonstrates that his qualifying relative would suffer extreme hardship in the event that she relocated to Pakistan with the applicant. The personal safety issues cited by counsel in 2009 have persisted and/or worsened, according to the U.S. Department of State's recent Travel Warning. This February 2012 document warns United States citizens of the risks of travel to Pakistan and enumerates ongoing security concerns in that country: terrorist attacks on civilian targets; religious intolerance and targeted killings of minorities; travel restrictions on non-Pakistanis; U.S. citizens kidnapped for ransom throughout the country; since the killing of Osama bin Laden in May 2011, an increased threat level against Westerners. The record reflects that the qualifying relative is a female, Christian, African-American, U.S. citizen whose fears of moving to this predominantly Islamic country are warranted by current circumstances there. Moreover, she says she and her husband would have to live with his family, due to poor job prospects for both her and the applicant; we note this situation would place them in restive Punjabi province, the governor of which was assassinated in 2011. See *Travel Warning—Pakistan*, U.S. Department of State, February 2, 2012.

In addition to security concerns, the record shows that the applicant's wife has never traveled overseas, lacks ties to Pakistan or any other foreign country, and maintains extensive ties to the Philadelphia metropolitan area, where she was born, raised, educated, works, and currently lives (in nearby Wilmington, Delaware). Her entire family lives there, including her two daughters and mother; her mother, the record shows, is receiving treatment for malignant thyroid cancer. One of her daughters is a teenager living at home, and she fears both leaving her alone in the United States and taking her along to Pakistan. She worries that her financial situation in Pakistan would not permit her to return stateside if her mother's condition worsened. Faced with moving to Pakistan, the applicant's wife expresses concern about ceasing to provide care and support for her mother, as well as worry about cultural adjustment, lack of fluency in the local language, gender discrimination, and inaccessibility of medical care.

The record reflects that the cumulative effect of the applicant's wife's health and danger concerns, lifelong residence in the United States and absence of ties elsewhere, significant cultural and linguistic obstacles to her adjustment, and loss of employment, were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, a qualifying relative would suffer extreme hardship were she to relocate to Pakistan to continue residing with the applicant.

The applicant's wife contends she will suffer emotional, physical, and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. She claims to be stressed by thoughts of possible separation from the applicant, who has assumed the role of father figure to her teenage daughter. Citing her children from two prior relationships, she states that, in the applicant, she has finally found someone to trust and rely on; her daughters' statements confirm that the applicant has assumed a central role in their family. The applicant's wife claims that his absence will make her less available to assist her ill mother.

Regarding financial hardship, without W-2 forms corresponding to recent tax returns on record, there is insufficient evidence to support the claim that removal of the applicant will eliminate the primary wage earner from the household. Although the record contains pay stubs showing the

applicant's wife working reduced hours, evidence is lacking regarding the reason for the reduction, whether her employer plans to restore her hours, or her efforts to obtain other work. Also absent is evidence of the care and support she provides her mother or of her mother's own financial resources. An income/expense listing, while suggesting that the applicant's departure will make his family's economic situation more difficult, does not show a hardship that is beyond the common or usual result of removal. Nor has it been established that the applicant will be unable to support himself outside the United States, thereby imposing hardship on his wife; rather, the record indicates that, while the applicant may earn less money in Pakistan, he has family with whom he can reside.

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. Her situation, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. While the applicant's wife may need to make alternate arrangements with respect to helping her mother, or seek employment that is full-time, these results are among the typical consequences of family separation. Based on the evidence provided, the applicant has not met his burden of establishing a qualifying relative would suffer hardship beyond the common results of removal or inadmissibility if he is unable to remain here.

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 the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.