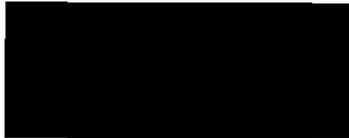


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

Date: **SEP 11 2012**

Office: NEWARK

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 procure an immigration benefit to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with her U.S. Citizen spouse.

In a decision dated July 29, 2010, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director, July 29, 2010.*

The record contains the following documentation: a brief filed by the applicant's attorney¹; statements submitted by the applicant, the applicant's spouse, and the applicant's father; medical documentation for the applicant's father; financial documentation; and letters of reference. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The field office director found that the applicant misrepresented himself by filing an asylum application under a false name and a false date of birth, and subsequently obtaining advance parole and reentering the United States on the advance parole document with the incorrect name and date of birth. The applicant states that he used his caste name when he filed his application for asylum, based upon advice from others who were also members of the Pakistan People's Party (PPP), who stated that he should use another name because if he was forced to return to Pakistan, the use of a different last name may prevent abuse and persecution suffered by members of the PPP. There is no evidence in the record to verify the applicant's caste name. The applicant provides no explanation

¹ The record indicates that [REDACTED] assisted the applicant to file the Form I-290B, Notice of Appeal or Motion. In accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, a new Form G-28, Notice of Entry of Appearance as Attorney or Representative, must be filed with an appeal filed with the Administrative Appeals Office. This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010). There is no current Form G-28 filed by [REDACTED] in conjunction with the Form I-290B in the record. On July 3, 2012, the AAO sent a facsimile message to [REDACTED] to request a new, fully executed Form G-28. The AAO has not received any response to this request. Without a new Form G-28 authorizing [REDACTED] to represent the applicant, the AAO cannot consider him as the attorney of record in this appeal. However, as the applicant signed the Form I-290B, the applicant will be considered as self-represented in this appeal.

for his use of a different date of birth when applying for asylum and advance parole. The applicant apparently entered the United States using a passport and a visa issued to him under his true name and date of birth. The applicant stated on his application for employment authorization that he entered the United States with a fake visa. Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). Upon review of the statement by the applicant regarding the misrepresentation related to his name and date of birth on his asylum application and application for advance parole, the AAO concurs with the field office director's decision that the applicant has not met his burden to explain the discrepancies in the use of a false name and date of birth on these applications, and thus is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Section 212(i) of the Act provides that:

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 an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's U.S. citizen spouse and lawful permanent reside father are the only qualifying relatives 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 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 Kini*, 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 record indicates that the applicant's father states is a lawful permanent resident in the United States, and that he is now 87 years old. The applicant states that his father is suffering from serious

medical hardships. There is medical documentation in the record that indicates that the applicant's father is legally blind, and has hepatitis C, asthma, degenerative joint disease, and dementia. The applicant's father submitted a statement to the record, in which he indicates that the applicant takes care of him, that he visits regularly, takes him for walks, and takes him to the doctor's office for medical appointments.

The record establishes that if the waiver application were to be denied, the applicant's father would experience hardships due to his age, his medical problems, and the loss of the care that the applicant provides to him. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if he remained in the United States without the applicant.

In addition, the record indicates that the applicant's lawful permanent resident father would experience hardship if he were to relocate to Pakistan to be with the applicant due to his medical conditions. The record indicates that the applicant's father is a widower, and has resided in the United States for more than ten years. There is no indication in the record that the applicant's father has family members to assist him and care for him in Pakistan. In addition, the U.S. Department of State has issued a travel warning for Pakistan, warning of the risk posed due to security incidents in that country. See *Travel Warning-Pakistan, U.S. Department of State*, dated August 27, 2012. Thus, based on the evidence on the record, the applicant has established that his father would suffer hardship beyond the common results of removal if he were to relocate to Pakistan to reside with the applicant.

The AAO thus finds that the situation presented in this application rises to the level of extreme hardship.² 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 she 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

² As the AAO has found that the applicant's father would suffer extreme hardship if the waiver application is not approved, there is no need to address whether the applicant has established extreme hardship to his other qualifying relative, his spouse.

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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance 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 hardships the applicant's lawful permanent resident father and U.S. citizen spouse would face if the applicant were to reside in Pakistan, regardless of whether they accompanied the applicant or remained in the United States; the fact that the applicant resided in the United States for more than 20 years; the applicant's apparent lack of a criminal record, and letters of reference written on behalf of the applicant. The unfavorable factor in this matter is the applicant's misrepresentation in his applications for advance parole and asylum in the United States.

The immigration violations committed by the applicant are 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 appeal is sustained. The waiver application is approved.