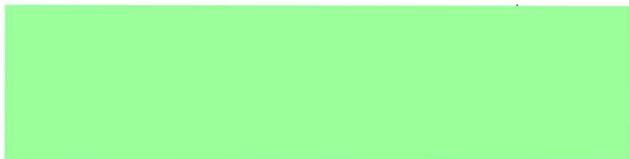


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, N.W. MS 2090
Washington, DC 20529-2090

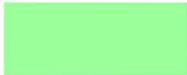


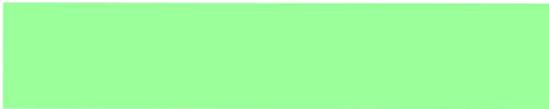
U.S. Citizenship
and Immigration
Services



DATE: **JAN 02 2013**

OFFICE: NEW DELHI

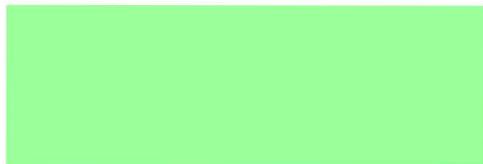
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IN RE: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) and 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 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,

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India and 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 under 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 admission into the United States through willful misrepresentation of a material fact. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his lawful permanent resident spouse and children.

The Field Office Director concluded that the applicant 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. *See Decision of the Field Office Director*, dated January 24, 2012.

On appeal counsel asserts that section 237(a)(1)(H) of the Act applies to the applicant, and the waiver should be granted as a matter of discretion. *See counsel's brief attached to Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated February 24, 2012.

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601; copies of the applicant's spouse's immigration applications; statements by the applicant, his spouse, children, grandchild, brother-in-law and a friend; medical documentation; and country-condition reports. 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 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 record reflects that the applicant attempted to enter the United States on March 14, 1996 by presenting an Irish passport with the name [REDACTED]. Upon the applicant's inspection, he admitted to using a fraudulent passport to enter the United States. The immigration inspector found him to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through fraud or misrepresentation. The record supports the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and the applicant does not contest his inadmissibility.

Counsel argues that section 237(a)(1)(H) of the Act should apply in the applicant's case. However, section 237(a)(1)(H) of the Act applies in removal proceedings and to those who were admitted. *See Matter of Fu*, 23 I&N Dec. 985 (BIA 2006). The applicant in this case

was neither placed in removal proceedings nor admitted. While counsel asserts a novel argument, because section 237(a)(1)(H) of the Act is not the subject of a I-601 waiver, it does not apply in the applicant's case.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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-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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The applicant’s 60-year-old spouse is a native of Pakistan and lawful permanent resident of the United States. She entered the United States in December 1997 and became a permanent resident in 2009. She states that the separation from her husband has been very difficult and “emotionally rough.” She loves her husband and relies on him for emotional support. She states that raising their four children while working, maintaining a household, and acting as a mother and father figure has caused her stress and depression. She maintains that her husband has missed many of

their children's milestones, such as birthdays, graduations, weddings and births of grandchildren; she reminds them daily of the applicant's love and longing to be with them. The applicant's brother-in-law mentions that his sister, the applicant's spouse, suffers from sleepless night, high levels of anxiety, and feelings of worthlessness from overworking. A letter from the applicant's spouse's doctor states that the applicant's spouse has been diagnosed and is being treated for noninsulin dependent diabetes, hypertension, hypercholesterolemia, bilateral lower extremities edema and osteoarthritis. The applicant's spouse states that she also receives "psychological medical care." Except for the letter from her doctor, no corroborating evidence has been submitted regarding other methods of medical care.

The record also lacks information regarding financial hardship that the separation from the applicant has caused his wife. The applicant indicated in an interview he had with a consular officer in [REDACTED] Pakistan on February 10, 2011 that he is financially independent, and his wife's brother supports her financially. However, the applicant's spouse states that she is the sole financial supporter of her family. Corroborating evidence of financial hardship was not submitted, and there is no indication that separation from the applicant has caused financial strain to his spouse.

The AAO has considered cumulatively all assertions of separation-related hardship, including the emotional, psychological and health-related consequences of separation. The AAO finds that, considered in the aggregate, the evidence is not sufficient to demonstrate that the applicant's spouse experiences extreme hardship that rises beyond the common results of separation from that which is typically faced by spouses of those deemed inadmissible.

The applicant's spouse indicates that she could not relocate to Pakistan. She came to the United States from Pakistan at age forty-five. After approximately fifteen years in the United States, she has created very close ties to her family and community in the United States. A friend states that the applicant's spouse has been an active member of their community and church for the last twelve years. Moreover, the applicant's spouse maintains that she would not receive healthcare for her medical conditions in Pakistan. She also states that if she were to live in Pakistan with her two younger daughters, the applicant would be required to be the sole income provider, as she would not be allowed to leave the house or work. The applicant's income would not cover their basic requirements. She also indicates that it would be unsafe for her to live in Pakistan due to the high crime rate, including frequent kidnappings. In her previous visit to Pakistan, the applicant kept close watch over her at all times. She indicates that her level of stress would increase due to her fear of harm in Pakistan. Country-condition reports were submitted to corroborate these security concerns. The U.S. Department of State's current travel warning for Pakistan supports the applicant's safety concerns.

Although the applicant's spouse expresses concern about relocating to Pakistan, the hardship she describes does not rise to the level of extreme hardship. She visited Pakistan in the past and lived there for most of her life. Although she has significant ties to the United States and outlines her medical, financial and safety concerns, the evidence in the record is not sufficient to show that the hardship that she would face in Pakistan, considered in the aggregate, is extreme. The AAO

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Page 6

therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.