



**U.S. Citizenship
and Immigration
Services**

(b)(6)

[Redacted]

Date: **JAN 03 2013**

Office: LOS ANGELES, CA

[Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

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 black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. 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 willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of U.S. citizen parents and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her parents in the United States.

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

On appeal, counsel contends the applicant established extreme hardship, particularly considering both of her parents' medical problems and advanced age, and country conditions in Pakistan.

The record contains, *inter alia*: an affidavit from the applicant; two affidavits from the applicant's mother, [REDACTED] two affidavits from the applicant's father, [REDACTED]; letters from Ms. [REDACTED] physician and physical therapist; letters from [REDACTED] physician and physical therapist; copies of tax returns; a copy of the U.S. Department of State's Human Rights Report for Pakistan and other background information; and an approved Petition for Alien Relative (Form I-130). 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 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, and the applicant does not contest, that she entered the United States in September 1989 using another individual's passport and visa. Therefore, the applicant is

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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-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.

In this case, the applicant's father, [REDACTED], contends he is eighty-two years old and has severe medical conditions, including hypertension, diabetes, and glaucoma. He states he has limited mobility and is unable to take care of his wife. The applicant's mother, [REDACTED] states she is seventy-four years old and suffers from high blood pressure, arthritis, knee pain, breathing problems, and congestive heart failure. She contends she has been admitted to emergency care several times and went into a coma for three days during one of the emergencies. She states that she now uses a wheelchair, has extremely limited mobility, is under a doctor's care for DJD Bilateral Knees, Lumbar Spinal Stenosis/Left Lumbar Radiculopathy, and has had twenty physical therapy sessions. According to Ms. [REDACTED] she is scheduled for knee surgery in December 2011. Both of the applicant's parents state that the applicant lives with them and that she cooks for them and takes them to the grocery store, doctor's appointments, the physical therapist's office, church, and the pharmacy. The applicant also reportedly keeps track of their medications and appointments, and helps to translate during appointments. According to the applicant's parents, all of their other children, except the applicant, live in California, but are married and have their own families, so are unable to care for them the way the applicant does. In addition, they state they are also experiencing extreme anxiety and stress due to their daughter's immigration status. Furthermore, they state they cannot return to Pakistan because they have lived in the United States for the past twenty years and it is unsafe in Pakistan. They contend that because the applicant has been Americanized, she is an easy target for the Taliban and radical Muslims.

After a careful review of the entire record, the AAO finds that if the applicant's parents remain in the United States without their daughter, they would suffer extreme hardship. The record contains ample documentation corroborating the applicant's parents' claims regarding their numerous medical conditions as well as their limited mobility. For instance, a letter from a physical therapist states that [REDACTED] has had twenty physical therapy sessions so far and is advised to walk only as needed. The record also shows that the applicant lives with her parents and the AAO acknowledges the applicant's contention that she helps them with all aspects of daily life, including taking them to medical appointments and physical therapy sessions, cooking meals for them, and driving them to church. In addition, the AAO recognizes the extreme anxiety and stress the applicant's parents would experience if the applicant returned to Pakistan to live by herself, without any family members. Considering these unique circumstances cumulatively, the AAO finds that the hardship the applicant's parents would experience if they remain in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's parents returned to Pakistan to be with their daughter, they would experience extreme hardship. As stated above, the record shows the applicant's parents have numerous health problems. The AAO recognizes that returning to Pakistan would disrupt the continuity of their health care. Moreover, the AAO acknowledges that both of the applicant's parents have lived in the United States for the past twenty years and that readjusting to living in Pakistan would be difficult, particularly considering their advanced age and medical problems. Furthermore, 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. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if they returned to Pakistan to be with their daughter is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

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 significant family ties to the United States, including her mother, father, and five siblings, all of whom are U.S. citizens; the extreme hardship to both of the applicant's parents if she were refused admission; evidence of the applicant's charitable contributions; 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.