



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 07 2013 OFFICE: NEW YORK, NY

FILE: [REDACTED]
(RELATES: [REDACTED])

IN RE: [REDACTED]

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:
[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.

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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the District Director, New York, New York. 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States by fraud or willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). 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 wife.

It is noted that the applicant is also inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered excluded and removed, and seeking admission within 5 years of the date of such removal.¹ In order to overcome inadmissibility under section 212(a)(9)(A)(i) of the Act, the applicant must obtain permission to reapply for admission by filing Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The director denied the applicant's Form I-212 on July 10, 2009, and the matter has been separately appealed to the AAO.

The director concluded, in a decision dated July 10, 2009, that the applicant had failed to establish his U.S. citizen wife would experience extreme hardship in the United States or in Pakistan, if the applicant were denied admission into the United States. The director determined further that the applicant failed to establish that a favorable exercise of discretion was warranted in the applicant's case. The Form I-601 waiver application was denied accordingly.

Counsel indicates on appeal that the director failed to consider the totality of hardship evidence in the applicant's case, and that the cumulative evidence establishes the applicant's wife would experience extreme emotional, physical, financial and career-related hardship if the applicant is denied admission into the United States. In support of these assertions, counsel submits affidavits from the applicant and his wife, medical evidence, financial and academic documentation, photographs, 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 on March 13, 1991, the applicant attempted to procure admission into the United States by using a passport that belonged to another person, [REDACTED]. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking to procure

¹ The applicant was ordered excluded and removed on February 4, 1993.

admission into the United States by willfully misrepresenting a material fact. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 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).

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, 1293 (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 applicant’s U.S. citizen spouse is his qualifying relative under section 212(i) of the Act.

The applicant states in an affidavit that he loves his wife; she would be “an easy target for kidnapping, rape and possible death” by anti-American terrorists in Pakistan; she has a medical condition; and he cannot ask her “to leave her job and her family and move to a strange and dangerous country.” He states also that conditions in Pakistan are dangerous for him because he has been in the United States for over 18 years, is considered “Americanized,” and will be “eliminated” by extremists and terrorists in Pakistan if he returns. The applicant apologizes for his past immigration violations and claims his actions were based on a fear of being returned to Pakistan and bad advice from prior counsel.

The applicant’s wife indicates in an affidavit that she and the applicant have been married for over 9 years and that she depends on him emotionally. She takes medication for “severe hypertension”; her condition gets worse during times of stress. Her medication causes side effects “including severe allergic reactions, confusion, fast or irregular heartbeat, joint pain, chest pain, mental or mood changes, severe or persistent dizziness and nausea or stomach pain, vomiting, sensitivity to sunlight;” and she depends on the applicant’s love and care to overcome the side effects associated with her medication. She fears she will have a “breakdown” without the applicant’s support, and she has had chest pains and panic attacks since the applicant’s waiver application was denied. She also has difficulty sleeping and concentrating at school and work, and she has become depressed.

She is attending nursing school to become a registered professional nurse, and in exchange for school tuition payment she agreed to work at her place of employment for two years after completion of the nursing program. If she moves to Pakistan, she would lose her job in the United States and be required to pay her employer the money spent on her tuition. Moreover, she is unable to speak the language in Pakistan, and she does not understand the culture. She does not believe she would be able to find work in Pakistan. She fears for her safety in Pakistan, due to terrorist activity and violence against U.S. citizens, women, and Christians. If she remains in the United States, she believes that she would need to help the applicant financially, which would cause her financial hardship. It would also be expensive to visit the applicant in Pakistan. She fears her mental and physical health will deteriorate without the applicant, and that the resulting pain may cause her to "end her life."

The record contains evidence of the applicant's wife's health care coverage, and a May 2, 2009 medical prescription for hydrochlorothiazide tablets for the applicant's wife.

Employment evidence reflects the applicant's wife earns \$40,700 a year as a licensed practical nurse, and academic and tuition documents confirm that in August 2008, the applicant's wife enrolled in a nursing "career ladder" program, paid for by her employer, with a May 2009 projected graduation date.

The applicant submits country-conditions reports to corroborate his wife's concerns that terrorist and religious violence exists in Pakistan and that violence against women occurs. The submitted reports also show that Pakistan has electric outages and water sanitation issues.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocated to Pakistan to be with him. The record reflects the applicant's wife was born and raised in the United States, she has no family or cultural ties to Pakistan, and she does not speak the local languages. She would abandon her training and employment as a nurse in the United States if she moved to Pakistan. In addition, U.S. Department of State country-conditions reports confirm her safety concerns, reflecting the occurrence of kidnappings of U.S. citizens in Pakistan; terrorist attacks on locations where U.S. citizens and Westerners congregate; violent religious intolerance; and warning U.S. citizens to defer non-essential travel to Pakistan. See http://travel.state.gov/travel/cis_pa_tw/tw/tw_5764.html. The cumulative hardship she would experience upon relocation to Pakistan rises above that normally experienced upon removal or inadmissibility.

The AAO finds, nevertheless, that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the country and she remained in the United States. The record lacks evidence establishing the applicant contributes financially to their household or demonstrating financial dependence on the applicant. The record also lacks evidence demonstrating that the applicant's wife contributes financially to the applicant, or that she would have to support him financially in Pakistan. Furthermore, the

medical prescription evidence in the record does not contain an explanation of its purpose, and does not demonstrate that the applicant's wife's physical or mental health would be affected if the applicant moved to Pakistan and she remained in the United States. The applicant submitted no other documentary evidence to corroborate assertions that his wife suffers from any of the physical conditions or medication side-effects asserted on appeal. The record also lacks documentary evidence to corroborate assertions that the applicant's wife would experience emotional hardship beyond that normally experienced upon removal or inadmissibility if she remained in the United States. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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. Furthermore, because 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.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility 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.