



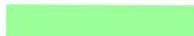
U.S. Citizenship
and Immigration
Services

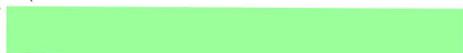
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DATE: **JAN 16 2013**

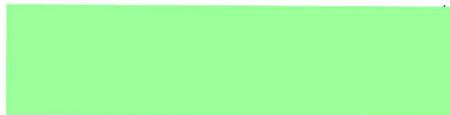
Office: NEW DELHI, INDIA

FILE: 

IN RE: 

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:

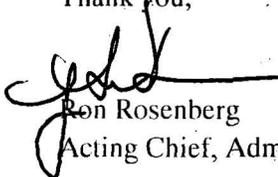


INSTRUCTIONS:

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 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, or a request for a fee waiver. 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 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 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 seeking to procure an immigration benefit through fraud or misrepresentation. The applicant is the son of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant failed to establish that a denial of his waiver application would result in extreme hardship to his father and denied the application accordingly. *See Decision of the Field Office Director* dated April 12, 2012.

On appeal, the applicant, through counsel, claims that the applicant's elderly father would face extreme hardship due to the applicant's inadmissibility. *See Appeal Brief*. In support of the appeal, the applicant submits a report prepared by a social worker, an updated letter by the applicant's father's physician, and a sworn statement executed by the applicant's brother.

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.

Section 212(i) of the Act provides:

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

In the present case, the record reflects that the applicant was found to be inadmissible because he sought admission to the United States in 1988 under an assumed name. The applicant does not

dispute this finding. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.¹

The Act provides that a waiver of inadmissibility, under section 212(i) is dependent first upon a showing that the admissibility bar imposes an extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant's case is based on a claim of extreme hardship to his lawful permanent resident father. The record contains references to hardship that the applicant's brother would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's siblings as a factor to be considered in assessing extreme hardship. In the present case, the applicant's father is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's brother will not be separately considered, except as it may affect the applicant's qualifying relative.

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 of Immigration Appeals (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,

¹ The record also refers to a criminal ground of inadmissibility under section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2). The field office director's decision, however, only addresses the applicant's inadmissibility under section 212(a)(6) of the Act. Further, the AAO finds it unnecessary to address the applicant's criminal grounds of inadmissibility because, if he is able to satisfy the waiver requirements of section 212(i), he will also satisfy the waiver requirements for a criminal ground of inadmissibility in section 212(h) of the Act.

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 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 in this case contains, in relevant part, an appeal brief, a statement signed by the applicant's brother, a report prepared by a social worker addressing the applicant's family's circumstances, the applicant's waiver application, and medical records relating to the applicant's father.

The applicant maintains that his father is elderly and infirm, and a long time lawful permanent resident of the United States. See Appeal Brief. The applicant further claims that his brother is overwhelmed with the sole responsibility to care for their father. *Id.* The applicant mentions that the applicant's father suffers from multiple chronic ailments, cannot function independently, and has missed medical appointments because of his brother's unavailability. *Id.* The applicant also maintains that a discretionary grant of his waiver application is warranted. *Id.*

The evidence in the record, considered either individually or in the aggregate, does not demonstrate that the applicant's father would face extreme hardship should the applicant's waiver application be denied. The applicant's father is a long time lawful permanent resident of the United States. He resides in Brooklyn, New York, near the applicant's two siblings and their families. The applicant's brother states that his father is dependent on him to take him to his medical appointments and prayer at his mosque. The applicant's sister only occasionally assists in caring for the applicant's father. The applicant's father's medical condition includes anxiety, depression, insomnia, diabetes, hypertension, coronary artery disease and hyperlipidemia.

The record does not indicate whether the applicant's father would consider relocating to Pakistan. The AAO finds nevertheless that relocation to Pakistan would result in extreme hardship to the applicant's father. The applicant's father is elderly and has strong family and community ties to the United States, where he has resided since 1998. He is under proper medical care for his chronic illnesses. The AAO finds that leaving two of his children behind, as well as his well-established lifestyle in the United States, and considering his age and health, would result in hardship beyond that which is normally associated with relocation.

The record, however, does not establish that the applicant's father would face extreme hardship should he remain in the United States. As previously noted, the applicant's father resides near two grown children who have until now been able to care for him and transport him. The AAO acknowledges the difficulties faced by the applicant's brother in being the primary caregiver for his father, and the potential relief that the applicant's presence in the United States would bring. Nevertheless, hardship to the applicant's brother is not a relevant consideration in this case and there is no indication in the record that the applicant's sister is unable to assist in caring for their father. There is also no financial evidence in the record such that the AAO could determine whether the applicant's father's economic situation would permit the hiring of a caregiver. The record also does not include any relevant medical insurance records. The applicant's father's medical condition includes chronic illnesses and mental health problems. The stress of being separated from his son exacerbates the applicant's father's condition, but it is a common occurrence in similar situations and does not rise to the level of extreme emotional hardship beyond that experienced by other individuals facing a relative's inadmissibility. The AAO therefore finds that the applicant has failed to establish extreme hardship to his father due to their separation as required under section 212(i) of the Act.

The AAO 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 applicant's father in this case.

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As the applicant has not established extreme hardship to a qualifying relative no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(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.