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



U.S. Citizenship
and Immigration
Services

DATE: JUL 18 2013

Office: NEW YORK, NY

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Administrative Appeals Office (AAO) previously dismissed the applicant's appeal in a decision dated November 23, 2011. The matter is now before the AAO on motion. The motion to reconsider will be granted, the prior decision of the AAO will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of Pakistan who was found to be inadmissible 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 procuring admission to the United States through fraud or willful misrepresentation of a material fact. He seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and stepchildren.

The district director, New York, New York, concluded that the applicant had failed to establish extreme hardship to his qualifying spouse and denied the application accordingly. *Decision of District Director*, dated August 13, 2008. The applicant filed a timely appeal with the AAO alleging that the district director had erred in finding him inadmissible. He also asserted on appeal that his qualifying spouse would not experience extreme hardship if the waiver application were denied. In our decision on appeal, we found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act. We also found that although the applicant had shown that his qualifying spouse would suffer extreme hardship upon relocation to Pakistan, he had not demonstrated that she would suffer extreme hardship on separation from the applicant. Accordingly, we found that the applicant had failed to meet his burden of demonstrating extreme hardship to his qualifying spouse for purposes of a waiver. *Decision of AAO*, dated November 23, 2011.

On motion, counsel for the applicant contends that the AAO erred in requiring that he demonstrate extreme hardship to the qualifying spouse on separation and on relocation. Counsel alleges that there is no legal basis for requiring extreme hardship in both situations. Additionally, counsel states that the AAO abused its discretion in finding that the qualifying spouse would not suffer extreme hardship on separation from the applicant.

A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

The applicant is inadmissible under INA § 212(a)(6)(C) for using a fraudulent passport to enter the United States and he does not dispute his inadmissibility on motion. A waiver is available to the applicant under INA § 212(i) dependent on his showing that the bar to his admission would impose extreme hardship on a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative 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 of Immigration Appeals (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 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).

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. INS*, 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.

We have previously found that the applicant's spouse would suffer extreme hardship if she were to relocate to Pakistan with the applicant. We will now consider whether we erred in finding that his U.S. citizen spouse would not suffer extreme hardship if she were to remain in the United States without the applicant.

The applicant has not shown that the AAO erred in requiring him to demonstrate extreme hardship to his qualifying spouse on relocation and on separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both the scenario of relocation *and* the scenario of separation. 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).

However, the applicant has demonstrated on motion that his qualifying spouse would suffer extreme hardship upon separation from the applicant. In our previous decision, we indicated that the qualifying spouse would suffer hardship due to the risks of residing in Pakistan due to her Catholic faith and because U.S. citizens have been victims of attacks in recent years. On motion, counsel notes that due to continuing security concerns in Pakistan, the qualifying spouse would be unable even to visit the applicant in Pakistan and would therefore become permanently separated from her husband. The U.S. Department of State currently "warns U.S. citizens to defer all non-essential travel to Pakistan" due to the fact that "terrorist attacks frequently occur against civilian, government, and foreign targets" and "terrorist groups continue to seek opportunities to attack locations where U.S. citizens and Westerners are known to congregate or visit." *U.S. Department of State, Travel Warning: Pakistan*, dated April 9, 2013.

In our previous decision, we recognized that the applicant is currently the sole source of financial support for the qualifying spouse, who has been unemployed since 2006. The qualifying spouse is also suffering from anxiety and depression. Additionally, the qualifying spouse and her two

adult children have close relationships with the applicant and would suffer emotional hardship in his absence. Also, the applicant and the qualifying spouse have been married since 1997. While there is insufficient evidence to show that those concerns alone would create extreme hardship for the qualifying spouse on separation from the applicant, the AAO finds that all of the relevant factors in the aggregate demonstrate extreme hardship to the qualifying spouse. Therefore, the AAO finds that the applicant has demonstrated extreme hardship to a qualifying relative as required for a waiver under section 212(i) of the Act.

In that the applicant has established that the bar to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

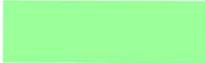
In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal 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 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).

Matter of Mendez, 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 adverse factor in the present case is the applicant's use of a fraudulent passport to obtain admission to the United States. The favorable factor is the extreme hardship his qualifying spouse would suffer if his waiver application were denied. Additionally, the applicant plays an important role in the lives of his two adult stepchildren, has held steady employment to support his family, and has paid taxes in the United States.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor. In these proceedings, the burden of establishing

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eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The motion is granted, the prior decision of the AAO is withdrawn, and the appeal is sustained.