



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **MAR 12 2013**

Office: PHILADELPHIA, PA

FILE: [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 waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania. 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 attempting to procure admission into the United States by fraud or the willful misrepresentation of a material fact. The applicant 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), to live with his U.S. citizen spouse and child.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated June 15, 2012.

On appeal, the applicant's attorney asserts that the qualifying spouse would experience extreme hardship if the applicant's waiver application was denied.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); a brief and letters written on behalf of the applicant; letters from the qualifying spouse, her father and her employer; Biographic Information (Form G-325A); country-conditions materials regarding Pakistan; relationship and identification documents for the applicant, qualifying spouse and their child; financial documentation; proof of medical insurance for the applicant and his family; an approved Form I-130; an Application to Register Permanent Residence of Adjust Status (Form I-485); a Petition for Alien Worker (I-140); and an Application for Asylum and for Withholding of Removal (Form I-589) with accompanying documentation. 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, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's wife 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 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.

The record indicates that the applicant arrived at Washington Dulles International Airport on February 7, 2000 and presented an altered passport belonging to a legal permanent resident of the United States. During secondary inspection, the applicant's true identity was revealed and he requested asylum. As a result of the applicant's misrepresentations, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant has not disputed his inadmissibility.

The AAO finds that the applicant has not established that his qualifying spouse would suffer extreme hardship if she remained in the United States and the applicant returned to Pakistan. The qualifying spouse indicates that she would suffer financial and emotional hardships if the applicant were removed to Pakistan. She states that she would not be able to afford their expenses, including daycare, without the applicant's financial help. Financial documentation demonstrates that the qualifying spouse earns most of the family's income, and the most current information from 2009 indicates that the applicant contributed \$11,500 to their combined income. As such, it is unclear from the record whether the applicant's spouse relies on him for financial support. The applicant also fails to provide sufficient details regarding his employment or child-care contributions.

With regard to the qualifying spouse's emotional hardship, she states that she constantly thinks about how stressful her life will be without the applicant. She indicates that she would become very depressed without her "best friend" by her side. While the applicant's spouse will likely experience emotional hardship as a result of her separation from her husband, the record provides little detail regarding her emotional hardship and there has been no diagnosis regarding her emotional condition. Further, although the qualifying spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

In addition, the applicant's spouse worries about their daughter growing up without a father. She believes that their daughter will be "devastated" without the applicant and will face emotional hardship upon separation. However, the record does not indicate how their daughter's hardship would affect the qualifying spouse, outside the ordinary consequences of removal. It is noted that Congress did not include hardship to an alien's child 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 children will not be separately considered, except as it may affect his spouse. The applicant has not provided

sufficient evidence to establish that the qualifying spouse would suffer financial or emotional hardships as a result of separation from the applicant that, considered in the aggregate, are extreme.

However, the AAO finds that the applicant has met his burden of showing that his qualifying spouse would suffer extreme hardship if she relocated to Pakistan to be with him. The qualifying spouse was born in the United States and has never lived outside of the United States. The qualifying spouse's parents and child also live in the United States and are U.S. citizens. The qualifying spouse and applicant's attorney assert that, as a foreigner and Christian, the qualifying spouse's relocation to Pakistan would be extremely dangerous. The record contains country-conditions reports about Pakistan, including the U.S. Department of State Travel Warning, dated February 2, 2012, which indicates that U.S. citizens are being targeted by extremist groups within Pakistan for terrorist actions, including suicide bombings, assaults and kidnappings. The record also contains letters from the qualifying spouse indicating that her father is a pastor and she is a Christian. As such, the qualifying spouse's relocation to Pakistan poses safety concerns to her. Moreover, the applicant's qualifying spouse has lived in the United States her entire life and has strong family ties to the United States, including her U.S. citizen parents and child. Therefore, the evidence considered cumulatively shows that the qualifying spouse will suffer extreme hardship in the event that she relocates to Pakistan.

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 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.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.