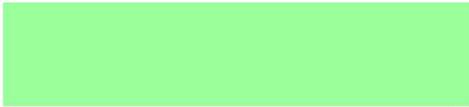




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



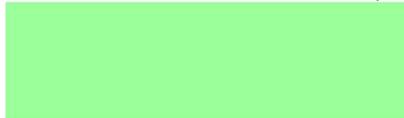
DATE **MAR 18 2013** OFFICE: NEW YORK, NEW YORK

File:

IN RE: Applicant: ARIF MAHMOOD

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. 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and daughter in the United States.

The District Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the District Director*, dated April 19, 2012.

On appeal, the applicant asserts the documentary evidence in the record supports a finding that his spouse and stepdaughter would suffer extreme hardship in his absence, and that he has not violated any other laws aside from his use of a passport that did not belong to him. Notice of Appeal or Motion (Form I-290B), dated May 16, 2012.

The record includes, but is not limited to: motions and correspondence from counsel; letters of support; identity, psychological, employment, and financial documents; and photographs. 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) 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.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects the applicant entered the United States without inspection around March 13, 1991. The record also reflects on March 18, 1991, U.S. officials apprehended the applicant in San Jose, California, and arrested him upon his presentation of a Pakistani passport that did not belong to him. The District Director found the applicant inadmissible for having presented the fraudulent Pakistani passport. The record supports the finding, and the AAO concurs the misrepresentation was material. The AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 [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. Hardship to the applicant or his daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case. 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).

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 (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 (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 contends his spouse would suffer extreme hardship in his absence as they are happily married and he supports her. His spouse further indicates: she depends on his emotional, psychological, financial, and moral support, and their break-up would cause her extreme hardship and heartache; he is a very good husband who has been a source of her strength; her life would be shattered as she married him to spend the rest of their lives together, and she could not live separately from him; and they have hopes and dreams together. Also, the applicant’s spouse’s daughter indicates they are a happy, married couple who have been together her entire life, she visits them frequently, and they plan family trips with her brother and younger sister.

Although the applicant’s spouse may experience hardship in the applicant’s absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is sufficient to establish [REDACTED], diagnosed the applicant’s spouse with Major Depressive Disorder, in part, because her symptoms “have been present during the same two-month period and represent a change from previous functioning.” See *Psychological Evaluation*, dated May 12, 2012. However, the AAO notes [REDACTED] diagnosis appears to be based primarily on self-reported information as the only interview conducted of the applicant’s spouse occurred on May 12. Additionally, [REDACTED] evaluation does not include any discussion of any ongoing treatment or any indication the applicant’s presence would be advantageous in such treatment. Absent an explanation in plain language from the treating mental health professional of the nature and severity of any condition and

a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed.

Moreover, the AAO notes [REDACTED] evaluation includes a discussion of the applicant's spouse's alcohol and drug addictions as well as her previous marriage, alleging verbal and physical abuse and that upon meeting the applicant, she has learned "that men and women 'really can love one another.'" *Id.* However, the AAO notes the record does not include any evidence of the applicant's spouse's previous marriage. *See* Form I-130; *see also* G-325 A, Biographic Information (Form G-325A). Further, the AAO notes [REDACTED] evaluation indicates the applicant's spouse's youngest daughter would be at high-risk for developing depressive disorders as research has shown "that children who are separated from a parent first develop Separation Anxiety and later develop a depressive disorder such as Major Depression." *Id.* However, [REDACTED] evaluation does not include the source of such studies. Accordingly, the AAO gives reduced weight to the discussion and evaluation of the applicant's spouse's and their daughter's emotional and psychological hardship.

Additionally, the record includes a Lease Agreement, indicating the applicant and his spouse are obligated to pay a monthly rent of \$1,200 from February 1, 2012 through August 31, 2014. *See Lease Agreement*, dated February 2, 2012. And, the record includes some income tax returns. However, the AAO finds the record does not include sufficient evidence of the applicant's spouse's current financial obligations or her inability to meet those obligations in the applicant's absence as the most recent billing statement in the record is dated February 28, 2007, over five years prior to the filing of the applicant's appeal. *See [REDACTED] Bill*. Additionally, the record does not include any evidence of the applicant's spouse's employment as a Home Health Aid or of labor and market conditions in Pakistan and the applicant's inability to contribute to the maintenance of his and his spouse's households. Moreover, the record includes a letter from [REDACTED] indicating the applicant has been employed by [REDACTED] since August 2007, currently serving in the capacity of Assistant Manager and earning a weekly salary of \$425. *See Employment Letter*, dated March 9, 2012. The AAO notes the letterhead contained at the top of [REDACTED] letter indicates the name of the organization is [REDACTED]. Based on this inconsistency, the AAO is unable to deduce the applicant's employment capacity. Accordingly, we give reduced weight to the discussion of the applicant's employer and earnings contained in the Employment Letter. The AAO cannot conclude the record establishes the applicant's spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's hardship, but finds even when this hardship is considered in the aggregate, the record fails to establish she would suffer extreme hardship as a result of separation from the applicant.

The applicant contends his spouse would suffer extreme hardship upon relocating to Pakistan to be with him as she would be unable to live there. His spouse indicates her daughter would "lose-out" on the promising future she has in the United States. [REDACTED] also indicates the applicant's spouse would be instantly isolated as she does not speak the language, and the family would be immediately plunged into poverty.

The record is sufficient to establish the applicant's spouse would suffer hardship if she were to relocate to Pakistan. The record reflects she has continuously resided in the United States, where she maintains close familial and community ties. Additionally, the U.S. Department of State has issued a travel warning for Pakistan: "The presence of al-Qaida, Taliban elements, and indigenous militant sectarian groups poses a potential danger to U.S. citizens throughout Pakistan. Terrorists have attacked several civilian, government, and foreign targets. The Government of Pakistan maintains heightened security measures, particularly in the major cities. Threat reporting indicates terrorist groups continue to seek opportunities to attack locations where U.S. citizens and Westerners are known to congregate or visit, such as shopping areas, hotels, clubs and restaurants, places of worship, schools, and outdoor recreation events. Terrorists have disguised themselves as Pakistani security personnel to gain access to targeted areas." *Travel Warning, Pakistan*, issued September 19, 2012. Accordingly, the AAO finds, in the aggregate, the applicant's spouse would suffer extreme hardship upon relocation 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 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. In re Pilch*, 21 I&N Dec. at 632-33. 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 this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As 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 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.