



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: MAY 06 2013

Office: CHICAGO, IL

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 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, Chicago, Illinois. 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. She also was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through willful misrepresentation of a material fact. The applicant's brother filed a Petition for Alien Relative (Form I-130) on her behalf. She seeks a waiver of inadmissibility in order to reside in the United States with her legal permanent resident spouse and other family members in the United States.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 2, 2012.

The applicant's attorney asserts that the Field Office Director made errors of law and fact in her denial; the qualifying spouse would face medical hardships upon separation from the applicant and financial, medical, and other hardships upon relocation to Pakistan, and he would also jeopardize his legal permanent resident status and ability to become a U.S. citizen.

The record contains the following documentation: an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); an appeal brief and letters from the applicant's attorney; affidavits from the applicant and qualifying spouse; medical documentation; a psychosocial assessment; financial documentation; identification and relationship documents for the applicant and qualifying spouse; a letter from the applicant's brother's employer; two reference letters regarding the applicant; an approved Form I-130 and an Application to Register Permanent Residence or Adjust Status (Form I-485) with accompanying documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of

such alien's departure or removal from the United States, is inadmissible.

....

- (v) The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 [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.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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 husband is the only qualifying relative in this case.<sup>1</sup> 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

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<sup>1</sup> The Field Office Director notes that the record does not contain evidence that the applicant legally divorced her former spouse but considers the applicant's current spouse her qualifying relative in her decision. See *Decision of the Field Office Director*, dated June 2, 2012.

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 first entered the United States on or about October 9, 1996 at or near New York City as a non-immigrant visitor and while her departure date is unclear, the record shows she next entered the United States on May 13, 1999 at Chicago as a non-immigrant visitor, with permission to remain until August 13, 1999. She left the United States on an unknown date in 2003. She therefore accrued unlawful presence between August 14, 1999 and her departure in 2003, a period in excess of one year. The applicant returned to the United States on May 25, 2007, and the record does not show that she has departed. In applying for adjustment of status, the applicant is seeking admission within ten years of her departure from the United States. The applicant, during her consular interview in Islamabad on May 1, 2007, failed to inform the consular officer that she had lived in the United States for over a year, which likely would have resulted in denial of the non-immigrant visa that she used to enter the United States in 2007. Therefore, as a result of the applicant's unlawful presence and willful misrepresentation, she is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act. Counsel does not contest the applicant's inadmissibility.

With respect to the hardship he would experience if he did not accompany the applicant to Pakistan, the qualifying spouse indicates that he "does not know how [he] would survive without her." He claims that he was "very depressed," did not eat properly and did not take care of himself while living apart from the applicant between 2003 and 2007. The qualifying spouse states that the applicant cooks, cleans their home, takes him to the doctor and ensures he takes his medication. The applicant states that she returned to the United States because her friends told her that her husband looked "terrible." The psychosocial report indicates that, according to the qualifying spouse's test results, he suffers from moderate anxiety and severe depression. The same report indicates that the qualifying spouse claimed to the social worker that he had never lived alone before the applicant's departure in 2003. Further, the report states that he said he is "not comfortable" being alone. Although the qualifying spouse appears to have suffered as a result of his separation from the applicant during the four years she was in Pakistan, his hardships have not been shown to rise beyond the ordinary consequences of separation from loved ones. Moreover, no objective medical evidence was submitted to corroborate claims that his emotional or physical condition deteriorated as a result of the applicant's absence.

The qualifying spouse indicates that he suffers from diabetes, high blood pressure, and high cholesterol and that he takes medicines for these conditions. The record contains one handwritten letter written on prescription paper, presumably signed by the qualifying spouse's doctor, which is difficult to read. Medical records submitted with the original waiver application confirm that the applicant's spouse has diabetes, high blood pressure and cholesterol and indicate that his conditions are controlled. As such, absent an explanation in plain language from the treating physician of the exact 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 medical condition or the treatment needed. Likewise, the record lacks objective evidence showing that the applicant is needed to assist the qualifying spouse with his medical conditions. Moreover, the Field Office Director noted in her decision that the applicant's spouse

was able to travel internationally at least 19 times between 2009 and 2012; she concluded that the record did not establish that his medical condition prevents him from traveling. The appeal does not address these concerns. As such, the record does not contain sufficient evidence to establish that the qualifying spouse would suffer hardships as a result of separation from the applicant that are extreme. The AAO finds that, considering the evidence in the aggregate, the applicant has not established that her qualifying spouse would suffer extreme hardship if he remained in the United States and she returned to Pakistan.

The applicant and her qualifying spouse also reported to their social worker that if they were to relocate together to Pakistan, they would be unable to find employment. The qualifying spouse states that in Pakistan, they drive on the other side of the road, so he would be unable to drive a taxi and that his son sold his printing business. He also states that at the applicant will not be rehired by the [REDACTED], because she now receives her pension from that position. He further states that no one will hire them because of employment discrimination, specifically ageism. However, the applicant provides no objective evidence to corroborate claims that they would be unable to find work in Pakistan. Furthermore, the record lacks evidence about their financial situation that would establish the need for the applicant and her spouse to work. The record indicates that the applicant receives a pension from the Pakistani government for her service of over 21 years, but the amount of such pension is not stated. Further, the record includes tax records but lacks current financial information reflecting the applicant's spouse's income and savings. As aforementioned, the Field Office Director noted that the applicant's spouse traveled several times internationally between 2009 and 2012. Such travel does not suggest that the applicant's spouse is struggling financially or would struggle should he move to Pakistan without immediately finding employment. Furthermore, although he indicates that he has nowhere to live in Pakistan, the psychosocial assessment notes that he has three siblings, two sons and other relatives in Pakistan. Though the psychosocial report states that the applicant and qualifying spouse believe none of their relatives have room for them, without details about their financial situation, the record does not establish that they would have difficulty procuring affordable housing in Pakistan.

The qualifying spouse in his affidavit also states that he fears that extremists in Pakistan might harm him because he has lived in the United States for many years and the applicant's brother works for the U.S. military. However, the record lacks evidence to suggest that the qualifying spouse, a native of Pakistan, would face safety issues based upon his long-term residence in the United States. Furthermore, the qualifying spouse does not explain how he would be identified by extremists as the brother-in-law of a U.S. citizen who works for the U.S. military. The applicant, after living in Pakistan for four years, claims generally that life was difficult for her as a woman, but she does not claim that she experienced threats or dangers related to her brother's employment. Similarly, the attorney's brief and psychosocial assessment indicate that country conditions in Pakistan, including inadequate medical care, would pose a hardship to the qualifying spouse. However, no documentation was provided to corroborate these claims. 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 documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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)).

Lastly, the applicant's attorney and qualifying spouse state that her qualifying spouse would jeopardize his legal permanent resident status, lose his opportunity to naturalize and lose his pension in the United States if he relocated to Pakistan. While the AAO empathizes with the qualifying spouse's potential challenges upon his relocation with the applicant, he was aware at the time of their marriage in Pakistan that he or his wife may be unable to live in the United States, as neither of them at that time had legal status in the United States. As such, the qualifying spouse had reason to expect at the time they were married that he or the applicant may not be able to live in the United States. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567. The AAO acknowledges that the qualifying spouse's potential loss of status in the United States represents a hardship; however, the applicant has not provided sufficient evidence to show that the qualifying spouse's cumulative hardships upon relocation would be extreme.

In this case the record does not contain sufficient evidence to show that the hardship faced by qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying spouse as required under sections 212(a)(9)(B) and 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 sections 212(a)(9)(B) and 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.