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



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **MAY 07 2013**

Office: NEWARK, NJ

[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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, NJ. 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 derivative beneficiary of an approved Petition for Alien Worker (Form I-140). 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 children.

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 September 3, 2009.

On appeal, the applicant's attorney contests the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. He asserts that the applicant did not speak English well at the time of the misrepresentation, did not remember his previous application, and his misrepresentation was not material or intentional. The applicant's attorney alternatively asserts that the qualifying spouse would experience extreme hardship if she relocated to Pakistan because she would suffer financial hardships and face safety concerns. The applicant's attorney indicates that the qualifying spouse's sons would also be in danger as U.S. citizens and they would have medical difficulties as asthmatics in Pakistan. Additionally, the applicant's attorney states that the applicant's spouse does not have any family ties to Pakistan, other than her father and siblings who no longer speak with her.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); an appeal brief written on behalf of the applicant; financial documentation; identification and relationship documents for the applicant, qualifying spouse and their two children; an affidavit from the qualifying spouse; letters from their children's doctors; an article about marriage in Islam; country-conditions materials regarding Pakistan; letters from the qualifying spouse's employers 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)(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.

The record indicates that the applicant sought entry into the United States on May 23, 1999 from Canada into the United States at Lewington Bridge. Upon questioning, the applicant told the inspecting officer that he had never attempted to apply for an immigration benefit in the United States. However, on or about November 1, 1990, the applicant filed an Application for Status as a Temporary Resident (Form I-687), which was administratively closed in 2007. Further, in the

applicant's adjustment interview on June 11, 2009, the applicant stated under oath that he never owned any business in the United States, yet public records reflect that the applicant was a proprietor of [REDACTED] as early as 1997.

The Board of Immigration Appeals (BIA) has held that the term "fraud" in the Act "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to" the advantage of the deceiver. *Id.* However, intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Moreover, a misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either: (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

Counsel contends that the applicant "did not speak English well" in 1999 and that "he had not remembered the previous application that occurred 9 years before." The applicant's attorney also asserts that the misrepresentation was not material, because the applicant was not denied temporary residence in the United States and had no motive to "omit" information about his prior application for an immigration benefit. However, the applicant's misrepresentation regarding whether he applied for prior immigration benefits cut off a line of inquiry relevant to his identity and eligibility for admission that might have resulted in a determination that he be excluded. Additionally, the applicant's statement that he never owned any businesses in the United States, when he actually was a proprietor of [REDACTED] directly relates to his eligibility as a derivative beneficiary of his spouse, who became a lawful permanent resident as a result of the worker petition filed on her behalf by [REDACTED]. Further, had the applicant been forthcoming regarding his identity and business interests in the United States, immigration officials may have pursued other relevant lines of inquiry in determining whether to allow him to withdraw his application for admission or to enter the United States.

Similarly, the applicant's spouse indicates in her affidavit that the applicant did not intend to commit fraud or misrepresentation, did not understand English, and was confused. 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)). As the applicant does not provide any independent evidence to demonstrate his admissibility, he has not overcome his burden of proving his admissibility, and is

therefore inadmissible. 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.

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.

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 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 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 BIA 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 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 relies “wholly on [the applicant] and could not imagine being without him” and that the prospect of the applicant’s inability to adjust his status in the United States “has greatly affected [her].” She also states that she “must live with [the applicant]” and that “there is no life [for her] without him.” Lastly, she indicates that she would be unable to have a “normal and happy family” were she to be separated from the applicant. While the applicant’s spouse will likely experience emotional hardships as a result of her separation from her husband, the record provides little detail regarding her emotional hardships. 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. See *Matter of Soffici* at 165. Moreover, the applicant provides evidence relating to the qualifying spouse’s emotional hardships upon separation without providing evidence of other types of hardships she may experience. 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.

Nonetheless, 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 has lived in the United States for over 20 years and has strong family ties to the United States, including two U.S. citizen children. The qualifying spouse asserts that she does not have any relationships with her family in Pakistan and that she fears for her safety from male members of her family opposed to her marriage to the applicant. The qualifying spouse and applicant’s attorney contend that her association with her Shiite husband puts her in danger in Pakistan as a minority.

The qualifying spouse also fears for her safety and for her protection of basic human rights as a woman and states that she would be unable to find employment or further her career due to sex discrimination in Pakistan. Further, she states that she would suffer other financial hardships upon relocation to Pakistan, including having to sell her home for less than its purchase price. She also states that she would be putting herself and the children, as U.S. citizens, in danger there. The most current U.S. Department of State Travel Warning, dated February 2, 2012, indicates that U.S. citizens are being targeted by extremist groups within Pakistan for terrorist actions, including suicide bombings, assaults and kidnappings. 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.