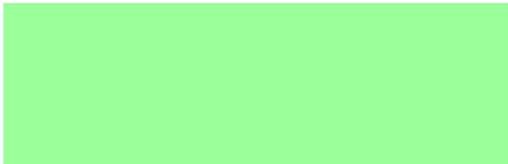


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, DC 20529-2090

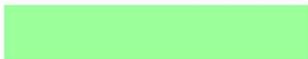


U.S. Citizenship  
and Immigration  
Services

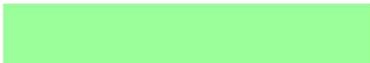


DATE: **NOV 18 2013**

OFFICE: NEW DELHI

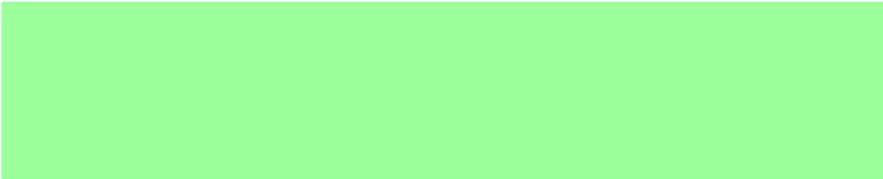


IN RE:



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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, New Delhi, India denied the waiver application. A subsequent appeal was denied by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant 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 attempting to procure an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen father.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 1, 2012. The AAO also determined that the applicant failed to establish extreme hardship to a qualifying relative and denied her appeal accordingly. *See Decision of the AAO*, dated March 26, 2013.

On motion, counsel for the applicant asserts that the applicant's father has suffered medical hardship in Pakistan and would jeopardize his health if he relocated to that country. Counsel further asserts that the applicant should not be inadmissible to the United States for misrepresentation because she was too young to willfully misrepresent a material fact and did not submit an invalid divorce decree for her father.

In support of the motion, the applicant submitted an affidavit from the applicant's father and medical documentation concerning the applicant's father. The entire record was reviewed and considered in rendering this decision.

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 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 immigrant 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...

The record contains a Form I-130, Petition for Alien Relative, submitted on the applicant's behalf by her stepmother, dated June 9, 2003. This Form I-130 was approved on March 25, 2004. During a consular interview in 2010, the applicant submitted a divorce certificate for her biological father and mother. A subsequent fraud investigation determined that the applicant's father's divorce from the applicant's mother is a sham divorce and there is no true marital relationship between the applicant's father and stepmother.

During the fraud investigation, the applicant asserted that her biological mother no longer resided with her siblings in their father's home. The applicant further asserted that her mother was residing with the applicant's maternal grandmother. However, neighbor inquiries indicated that the applicant and her siblings have lived in the same house in Sialkot since birth, where they reside with their biological mother. Neighbors also indicated that the applicant's biological parents are not divorced and the applicant's father resides in his family's home upon his visits to Pakistan. It is noted that the fraud investigation determined that the applicant's father does not have a true marital relationship with the applicant's stepmother, the petitioner in the applicant's Form I-130. The Board of Immigration Appeals has held that sham divorces should not be recognized for immigration purposes. *See In re Aldecoaotalora*, 18 I&N Dec. 430 (BIA 1983). As the divorce between the applicant's biological mother and father is not recognized, neither is the marital relationship between the applicant's father and stepmother.

The applicant was not truthful regarding the residence of her biological mother throughout the fraud investigation. The record also reflects that the applicant's biological mother and father reside together, as a family unit, during the applicant's father's visits to Pakistan. The applicant's father asserts that he resides with his ex-spouse in her home during his travels to spend time with his children. It is noted that the applicants and her siblings, in the fraud investigation, stated that their Sialkot home is owned by their father. There is no explanation concerning why the applicant's father's ex-spouse would reside in his home. The Form I-130 the applicant's stepmother filed on the applicant's behalf was revoked on September 16, 2011. It is noted that the U.S. Department of State Foreign Affairs Manual, considered persuasive though not binding by the AAO, states that if a petition is revoked with respect to entitlement to status under a family relationship petition; such as document fraud, sham marriage, or divorce; the materiality of the misrepresentation is established. 9 FAM 40.63 N10.1

Counsel for the applicant asserts that the Child Status Protection Act defines a child as an unmarried individual under the age of 21, so that the applicant was a child without the capacity to make willful representations at the time of her consular interview. The field office director's decision states that the applicant made misrepresentations concerning her mother's residence in 2006 and submitted a false divorce certificate<sup>1</sup> during a 2010 consular interview. The record

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<sup>1</sup> The consular officer, after a fraud investigation, determined the applicant's father's divorce decree to be fraudulent. Counsel submitted a letter from the [REDACTED], stating that the divorce certificate for the applicant's father and biological mother, dated April 29, 1999, is true and correct. The letter was submitted to the AAO on appeal and it does not appear that it was submitted to the USCIS field office at the time the Form I-

reflects that the applicant would be at least 19 years of age at the time of a 2010 interview. It is noted that the Child Status Protection Act addresses which individuals retain child classification for the purposes of qualifying for permanent resident status. No provision of the Child Status Protection Act precludes the determination that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and this ground of inadmissibility does not contain a minor exception.

Based upon the applicant's untruthful responses during the fraud investigation and the investigation's findings concerning the relationships between the applicant's father and his ex-spouse and current spouse, the applicant has failed to satisfy her burden of proof and demonstrate that she is not subject to inadmissibility under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure an immigrant visa through fraud or misrepresentation.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen father 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

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601 was submitted. The validity of this document is unclear and the AAO is not in the position to overrule the determination that the divorce decree was fraudulent.

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 reflects that the applicant is a 22-year-old native and citizen of Pakistan. The applicant’s father is a 54-year-old native of Pakistan and citizen of the United States. The applicant is currently residing in Pakistan and the applicant’s father is residing in Forest Hills, New York.

The applicant’s father asserts that he has six daughters, but the applicant is most dear to him. The applicant’s father contends that he is feeling depressed without the applicant and that his diabetes places him at a higher risk for depression. The record contains a medical letter stating that the applicant’s father has been diagnosed with uncontrolled diabetes, hypertension, and diabetic neuropathies. The medical letter further states that the applicant’s father needs his daughter in the United States to assist with his chores, including preparing meals to control his

diabetes. It is noted that the applicant has never resided in the United States, and there is no indication that the applicant's father has been unable to maintain his household and prepare meals in the applicant's absence.

It is acknowledged that separation from a child often creates hardship for both parties, and the evidence indicates that the applicant's father is suffering emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's father is suffering extreme hardship upon separation from the applicant. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is only available in cases of extreme hardship, and not in every case where a qualifying relationship exists.

The applicant's father asserts that he cannot relocate to Pakistan because of his medical conditions, for which he would not receive appropriate attention in that country. The record reflects that the applicant's father received prescriptions for four medications, Metformin, Cyclobenzaprine, Gabapentin, and Ibuprofen, to address his hyperglycemia and diabetes mellitus type II. The applicant's father contends that he was hospitalized on a prior visit to Pakistan after receiving fraudulent Metformin and it would be dangerous for him to be in Pakistan. The record contains a discharge certificate stating that the applicant's father was hospitalized in Pakistan from February 20, 2013 to February 24, 2013 upon receiving fake diabetes medication at a pharmacy. The record also contains background information indicating that the sale of counterfeit drugs is a problem in Pakistan and at least 30 percent of medicine bought in the country is either counterfeit or substandard.

The applicant's father asserts that he would not be able to afford his medication in Pakistan and that he would be unable to support himself and his family upon relocation. The applicant's father contends that he owns and operates his own company in the United States, but that he would not have any income if he resided in Pakistan. It is noted that the record does not contain information concerning the applicant's father's previous employment in Pakistan or supporting documentation concerning his current position.

The applicant's father also asserts that he would fear for his safety in Pakistan as a citizen of the United States. The applicant's father contends that he would be in danger because of the anti-American protests and terrorist attacks in Pakistan. The record reflects that the applicant's father visits Pakistan to stay with his family and there is no indication that he has experienced any threats to his safety. However, it is also noted that the U.S. Department of State has issued a travel warning for Pakistan, dated September 6, 2013, stating that U.S. citizens should defer all non-essential travel to Pakistan and that terrorist attacks frequently occur throughout the country.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Pakistan. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court

decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen father 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 balancing positive and negative factors to determine whether the applicant merits this waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The motion is granted and the prior decision of the AAO dismissing the appeal is affirmed.