



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **OCT 01 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 (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 waiver application was denied by the Field Office Director, Chicago, Illinois. The field office director's decision was appealed to the Administrative Appeals Office (AAO) and the appeal was dismissed. The matter is now before the AAO on motion. The motion will be granted and the AAO's previous decision affirmed.

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. 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.

In a decision, dated June 2, 2012, 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.

On appeal, the applicant's attorney asserted 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.

In our decision, dated May 6, 2013, we found that the applicant had failed to show that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility. Specifically, we found that the record lacked supporting documentation to show the severity and nature of the applicant's spouse's conditions or that the applicant's spouse's medical conditions were deteriorating because of the applicant's absence. In addition, we found that the record did not include documentation to establish the applicant's and her spouse's financial situation. The record indicated that the applicant had income from her previous employment in Pakistan, but did not reflect how much. The record also indicated that the applicant's spouse has three siblings, two sons, and other relatives living in Pakistan. His record of frequent international travel (19 trips) during a three year period indicated that the severity of his medical and financial problems was not extreme. Finally, the applicant failed to submit documentation to support the claims made regarding country conditions in Pakistan. The appeal was dismissed accordingly.

On motion, counsel requests that the applicant's case be reopened as the applicant's spouse's medical condition has deteriorated to the point of him needing aggressive care that can only be done in the United States with the help of the applicant. Counsel submits a brief, a letter from the applicant's spouse's doctor, additional medical records and blood test results, an affidavit from the applicant's spouse, an affidavit from the applicant, and two articles concerning medical care in Pakistan.

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.

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 2003 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 did not contest the applicant's inadmissibility nor does he contest the applicant's inadmissibility on motion.

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. 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 on motion indicates that the applicant’s spouse now suffers from chronic kidney disease, Stage 3, making his medical condition, including his diabetes, high blood pressure, and high cholesterol more challenging. The applicant’s spouse’s doctor has recommended he go on a strict low fat, low sodium diet or he will likely have to be put on dialysis. The record indicates that the applicant’s spouse will require follow-up visits to his doctor every three months to monitor his progress as well as yearly appointments with an ophthalmologist and a podiatrist. The applicant’s spouse claims that because he cannot cook and is forgetful, he will not be able to control his condition without the applicant. We note that the applicant’s spouse asserts that over the last few years he has been under the applicant’s care and his condition has still worsened. We acknowledge that separation will result in some hardship as the applicant will no longer be able rely on his spouse’s care, but as the record does not indicate that the applicant’s spouse is unable to learn to care for himself, prepare his own meals and take his medication, we do not find that the hardship he would face upon separation rises to the level of extreme.

Furthermore, we do not find that the current record indicates that the applicant’s spouse will suffer extreme hardship upon relocating to Pakistan. We acknowledge the articles submitted on motion, but these are not reflective of what a person in the applicant’s spouse’s situation would face if in need of dialysis or renal replacement in Pakistan. The article submitted concerns problems with dialysis being done free of charge and as we are still unable to assess the applicant’s full financial

situation, we find that it is not certain that the applicant's spouse would have to have his dialysis performed free of charge. The article indicates that dialysis through a private setup would be 8,000 Pakistani Rupees or approximately \$76.00. Furthermore, the medical documents in the record indicate that with a low-fat and low-sodium diet plan the applicant's spouse's condition may not worsen to the point of needing dialysis or renal replacement.

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 motion is granted and the AAO's previous decision is affirmed.

**ORDER:** The motion is granted and the AAO's previous decision is affirmed.