

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date: **DEC 04 2014**

Office: LAWRENCE

FILE: [REDACTED]

IN RE: Applicant: [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:

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Lawrence, Massachusetts, denied the waiver application and 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 an immigration benefit through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen spouse.

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 March 25, 2014.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the field office director erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. With the appeal counsel submits a brief, affidavits from the applicant and the applicant's spouse, medical documentation for the applicant's spouse, a psychological evaluation of the applicant's spouse, financial documentation, country conditions information for Pakistan, letters of support for the applicant and his spouse, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485) and other petitions and applications submitted by or on behalf of the applicant. 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.

Section 212(i) of the Act provides that:

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 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 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 reflects that the applicant entered the United States as a B-2 visitor in September 1995, changing status to an F-1 student in 1996. In October 2000 a Petition for Amerasian, Widow(er), or

Special Immigrant (Form I-360) was filed on the applicant's behalf as a special immigrant religious worker. The petition was approved in 2001, but following a Compliance Review of Religious Worker site visit in April 2008 and a review of city records, USCIS determined that information submitted in support of the petition was in fact not true. Based on information found through the compliance visit, including that the site had been unoccupied for an extended period of time, that the applicant had other employment,<sup>1</sup> and that during verification interviews the applicant and petitioner provided conflicting information, a Notice of Intent to Revoke was issued to the petitioner on August 29, 2008. The petitioner did not respond to the allegations as noted in the notice. The Form I-360 petition was revoked on August 10, 2009, as of the date of approval, after the petitioner withdrew the petition.<sup>2</sup> Based on this information the field office director determined that the applicant is inadmissible for fraud or misrepresentation. On appeal counsel asserts that the I-360 petition was not revoked for fraud, and if even so the fraud would lie with the petitioner rather than the applicant. Counsel asserts that the field office director's denial failed to connect the I-360 petition with any misrepresentation by the applicant.

In his affidavit the applicant states that he had a troubled relationship with the petitioner, but that the applicant continued the relationship as he wanted to serve those who attended the mosque and wanted to have a legal status. The applicant asserts that allegations from the visit to the mosque were about the petitioner and the institution, not him, and that he did not commit fraud. We note, however, that the applicant submitted an Application to Adjust Status (Form I-485) on December 6, 2001 based on the approved I-360 petition, and that on a Form G-325, Biographic Information, signed by the applicant in November 2003 and submitted in support of the Form I-485, he indicated he was employed as an imam by ██████████ Massachusetts. The Notice of Intent to Revoke the Form I-360 indicates that a compliance review conducted at that address resulted in the discovery that the building was boarded up and padlocked, had no source of heat, and was known to be vacant for years and possibly decades, and that there was no certificate of occupancy for the mosque. As a result of this investigation, the I-360 Petition was revoked based on findings that the petitioning religious organization was not operating as claimed in the I-360 petition and the applicant was not employed there full-time in a religious occupation as claimed in the petition. The applicant claimed he was employed by ██████████ as an imam on his application to adjust status and supporting documentation, but the record indicates that he was not employed there and that the petitioning religious organization was not operating a mosque at the purported address of his employment as he claimed. We therefore find that the applicant sought to procure an immigration benefit through fraud or willful misrepresentation of a material fact and concur with the Field Office Director that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

<sup>1</sup> We note that on his 2002 income tax returns, the applicant listed only income earned through his employment at ██████████ and listed his occupation as clerk, though he later submitted copies of checks from ██████████ all dated July 2004, with the notation "retroactive salary."

<sup>2</sup> On November 23, 2009, the petitioner submitted a Form I-290B, Notice of Appeal or Motion, requesting that the Form I-360 be reinstated and the matter reopened, however the motion was dismissed on January 5, 2010, as untimely filed.

lawfully resident spouse or parent of the applicant. The applicant's spouse 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-Moralez*, 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

speaking 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (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.

Counsel asserts that the applicant's spouse has a joint condition that causes intense pain and that the applicant's spouse is unable to lift her baby daughter and that the applicant does the shopping and laundry. Counsel asserts that with the applicant his spouse for the first time was able to seek medical treatment as her parents had not understood her physical problems when she was growing up. Counsel asserts that the spouse's disability has been a source of depression and shame throughout her life as her awkward physical condition made her a lonely, sad child and that deep scars on her legs from surgery affected an already low self-esteem. Counsel asserts that the applicant's spouse has never been able to live a fully independent life and that the applicant is the only person who has accepted the limitations of her physical condition and provided everything, including dignity.

In her affidavit the applicant's spouse describes her childhood medical problems that resulted in screws surgically placed into her leg and states that she has scars from operations, had no friends, and was not suited for marriage until she met someone online that she later married. She states that after she came to the United States she was ignored by her then-spouse and had difficulty surviving. She states that they eventually divorced, leaving her feeling ashamed and depressed until the applicant changed her life and took care of her. She states that her daughter was born in 2013, but because of her own physical pain she cannot pick up the baby or drive, so she needs the applicant to help, as her brother and friends have their own lives.

A letter from the spouse's doctor states that she has significant hip pain and dizziness of unknown origin and that she needs help caring for her infant daughter, but provides no further detail about her current condition. Medical documentation submitted to the record indicates that the spouse had therapy in 2011 for cervical and lumbar strain and was prescribed pain medication. Physician reports from 2011 indicate that she could return to work but should limit lifting, bending, reaching, and kneeling.

A letter from a licensed clinical social worker states that the applicant's spouse has symptoms of depression and anxiety causing emotional withdrawal, tension, and panic attacks. The letter states that the applicant's spouse has no other person to help with her daughter who has developmental needs that require early intervention assessment. The letter states that the spouse's daughter was referred to an early intervention program with concerns that she was not meeting certain developmental milestones like crawling, which appeared due to the fact that the spouse must keep her in a stroller during the day because of her inability to bend and pick up the child.

Although the record shows the applicant's spouse experiences some limitations due to medical problems, the record does not establish that any treatment she receives requires the applicant's physical presence in the United States or that she would otherwise be unable to find assistance caring for her daughter.

Counsel asserts that the applicant's spouse has no means to support herself without the applicant so would probably live in a shelter and rely on welfare, food stamps, and other public assistance. The spouse states that she currently has too much pain to work, so she is surviving on the applicant's earnings. The letter from the social worker states that the spouse's medical condition limits her hip movement and ability to work, so she depends on the applicant's income for all financial obligations and surmises that without the applicant his spouse may live in a shelter and become dependent on assistance and welfare. The record indicates, however, that the applicant's spouse has been gainfully employed for several years, and a letter dated August 13, 2013 from [REDACTED] states that she has been employed there since December 18, 2009 as a parking attendant.

Although we recognize limitations on the spouse's ability to work due to medical issues, the record does not establish that she has been unable to earn an income by working to support herself or otherwise receive financial assistance. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

We recognize that the applicant's U.S. citizen spouse will endure some hardship as a result of long-term separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme hardship based on the record.

We find, however, that the record establishes that the applicant's spouse would experience extreme hardship if she were to relocate to Pakistan to reside with the applicant. Counsel asserts that the Kashmir region was devastated by a 2005 earthquake and the infrastructure has not been rebuilt. Counsel asserts that the spouse's medical requirements would not be supported by Pakistan's substandard, corrupt healthcare systems, and that the Kashmir region has extremely inadequate healthcare. Counsel further asserts that due to her health condition the applicant's spouse cannot perform tasks expected of Muslim women, such as prostrating herself for extended periods of time.

The applicant's spouse states that she does not speak the Urdu language of Pakistan and that sitting is important part of rituals there, but she cannot sit for extended periods because of pain. She states that her condition would bring shame on the applicant if he has to carry their baby and has a crippled wife. The applicant states that he has little family in Kashmir as they have migrated to other regions. He states that Kashmir is poor and unsafe and that it was devastated by an earthquake that destroyed the infrastructure, including schools, hospitals, and mosques. He states that there are no jobs there, towns are crowded with desperate people, violence is growing, and hospitals are scarce.

The U.S. Department of State warns U.S. citizens to defer all non-essential travel to Pakistan, notes that many parts of the country are affected by militancy and violent extremism, and states that crime is a serious concern for foreigners throughout Pakistan. It indicates that adequate basic non-emergency medical care is available in major Pakistani cities but is limited in rural areas, and that facilities in the cities vary in level and range of services, resources, and cleanliness and that U.S. citizens may find them below U.S. standards while facilities in rural areas are consistently below U.S. standards. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Pakistan*, August 8, 2014.

The record establishes that the applicant's spouse is a native of Morocco, and she would be separated from her community in the United States and unable to communicate and would be concerned about her physical safety, financial well-being, and health as well as that of her daughter if she were to relocate to Pakistan with the applicant. It has thus been established that the applicant's spouse would suffer extreme hardship if she were to relocate abroad to reside with the applicant due to his inadmissibility.

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. 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 this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his 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 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 appeal is dismissed.