



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **MAR 20 2014** Office: TAMPA, FL

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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tampa, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Pakistan who 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 a benefit under the Act. The applicant's spouse is a lawful permanent resident and his child is a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), was denied accordingly. *Decision of the Field Office Director*, dated April 30, 2013.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, because he simply filed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), without supporting documentation, citing *Ortiz-Bouchet v. U.S. Attorney General*, 714 F.3d 1353 (11th Cir. 2013). Counsel asserts alternatively that the applicant's spouse would experience extreme hardship if the waiver application is denied. *Brief in Support of Appeal*, filed August 27, 2013.

The record includes, but is not limited to, affidavits of the applicant and his spouse, financial records, medical records, photographs, educational records and country-conditions information for Pakistan. 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, that:

- (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:

- (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.

The record reflects a Form I-360 was filed on the applicant's behalf on February 16, 2006, in which the category "special immigrant religious worker" was requested. The signature on the petition appears to be [REDACTED] and it matches the applicant's signature as it appears on other immigration forms in the record. The address on the petition was listed in care of [REDACTED]. The record reflects that the applicant filed a Form I-360 without supporting documentation. A Request for Evidence (RFE) was issued on March 6, 2006, to the applicant in care of [REDACTED] and the applicant did not respond to the RFE. The Form I-360 was denied due to abandonment on July 20, 2006.

The Field Office Director states that the applicant is inadmissible under section 212(a)(6)(C) of the Act because he was not qualified as a religious worker when the petition was filed; the individuals, [REDACTED] who helped the applicant complete and file the Form I-360 were involved with a large immigration-fraud scam related to religious workers, employment and legalization benefits; and these individuals subsequently were convicted in the United States District Court of New Jersey.

Counsel asserts that the applicant did not commit fraud or willful misrepresentation; he simply filed a Form I-360 in a category under which he did not qualify; the applicant may have filed a petition without a legal or factual basis, but this does not constitute fraud or willful misrepresentation; the applicant was the victim of an unscrupulous individual; and the applicant was completely truthful during his adjustment of status interview regarding the filing of the Form I-360. Counsel cites *Ortiz-Bouchet v. U.S. Attorney General*, 714 F.3d 1353 (11th Cir. 2013) as support for his assertion that filing a Form I-360 that has no basis because the applicant did not possess the qualifications for the classification sought, without more, does not constitute fraud or willful misrepresentation.

The *Ortiz-Bouchet* case involved a religious-worker petition in which the applicant's signature was forged on documents and the applicant was unaware of the misrepresentations made on his behalf. This case differs from the applicant's case, in that the applicant signed his Form I-360, which includes a statement before the signature line certifying that the application is true. Moreover, the applicant's form does not list a preparer. By requesting classification as a religious worker, the applicant misrepresented that he met the requirements of the position, which include prior experience in a religious occupation. However, the applicant asserts he does not have experience as a religious worker, is not qualified to perform such work, and that he is aware the petition filed on his behalf was not valid. Although the applicant asserts that he did not know what form he signed when he signed Form I-360 in 2006, he provides no evidence to corroborate his assertion other than a signed statement.

The burden of proof remains with the alien to show by a preponderance of the evidence that he did not commit a material misrepresentation and that he is not inadmissible. Section 291 of the Act, 8 U.S.C. § 1361. See also, *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). Upon review, the AAO finds the record supports the director's conclusion that the applicant sought to procure an immigration benefit through willful misrepresentation of a material fact. Accordingly, 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 lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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 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 will first address hardship to the applicant's spouse if she relocates to Pakistan. The applicant's spouse states that she was born in Cuba; she came to the United States almost 10 years ago, when she was 20 years old; she owns a home with the applicant in Florida; her aunt lives with her; she is very close to her grandparents, with whom she previously lived in the United States; she obtained a medical-assistant certificate and would like to advance her career; Pakistan is an unstable and dangerous country; there would be no employment opportunities for her and the applicant; she does not want their daughter to live in poverty and where women are treated as a second-class citizens; she does not speak the language in Pakistan; she was baptized as a Roman Catholic but is now agnostic; and she is concerned that she would be perceived as a Westernized woman who does not respect religious principles in Pakistan.

The applicant's spouse also states that she has been receiving treatment for high blood pressure. The record includes a physician's letter stating that the applicant's spouse was diagnosed with hypertension in July 2011 and is taking medication.

The record includes country-conditions information for Pakistan, detailing issues for religious minorities and the targeting of U.S. citizens by extremist groups. The record reflects that religious minorities remain at serious risk of violence and intimidation based on their beliefs, and areas where U.S. citizens are known to congregate or visit have been attacked by terrorists. The U.S. Department of State issued a Travel Warning on September 6, 2013 which details safety and security issues for U.S. citizens and recent attacks in the country.

The record reflects that the applicant's spouse has U.S. citizen family ties in the United States. She does not have ties to Pakistan and is not fluent in Urdu. Considering country conditions and her inability to speak Urdu, it would be difficult for her to obtain employment and to advance her career goals. In addition, there are documented safety issues and concerns related to being a U.S. citizen in Pakistan. She also would be raising their three-year-old daughter in a foreign country with security issues. Although she has a medical issue, it is not clear whether suitable medical care is available for her condition. Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship if she relocated to Pakistan.

The AAO will now address hardship to the applicant's spouse if she remains in the United States. Counsel states that the applicant and his spouse have been married for over three years; they have a three year-old child; the applicant is gainfully employed and supports his family; and separation will have a detrimental effect on the applicant's spouse's relationship with their daughter.

The applicant's spouse states that the applicant is employed full-time and she is not currently working; she has a medical-assistant diploma; she would like to advance her career and requires the applicant's financial and emotional support; the applicant is a caring husband and father; he is the sole breadwinner in the family; it is important for a child to be brought up with the love of a father and mother; she has been experiencing considerable distress because of the applicant's uncertain immigration situation; she has been receiving treatment for high blood pressure; and she had a fainting spell.

As mentioned, the applicant's spouse was diagnosed with hypertension in July 2011 and is taking medication. The record includes prescription notes for the applicant's spouse. Additionally, the applicant's spouse was seen by a licensed mental-health counselor. The counselor details the applicant's spouse's history of family abuse, traumatic life events and issues with previous relationships. The counselor states that the applicant's spouse's father abandoned her to a childhood fraught with abuse on all levels, she is terrified that her daughter will feel the same abandonment that she did, and she has never experienced a stable family. The counselor diagnosed her with major depressive disorder, severe, and panic disorder. The record includes a separate evaluation from a licensed social worker who lists major depressive disorder as a diagnostic impression.

The record includes numerous bills for the applicant and his spouse, evidence of property ownership and evidence of their joint policies, including automobile and life insurance. The applicant and his spouse's 2012 federal tax return reflects an income of \$17,850 and their 2011 tax return reflects their income as \$22,827. The majority of the income was earned by the applicant.

The record reflects that the applicant and his spouse have a child together and are a close family. Because the applicant is currently the main source of income for the family, the record supports finding that the applicant's spouse would experience significant financial hardship without the applicant. The record also reflects that the applicant's spouse would be raising their child without the applicant. The record supports finding that she would experience significant emotional hardship without the applicant. In addition, she has a medical issue. The AAO also notes that career advancement would be more difficult without the applicant being present to assist his spouse. Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a

waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301 (citation omitted).

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the applicant's lawful permanent resident spouse and U.S. citizen child, extreme hardship to his spouse, his apparent lack of a criminal record, and his filing of tax returns. The unfavorable factors include the applicant's misrepresentation, his unauthorized period of stay and his unauthorized employment.

The AAO finds that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met.

ORDER: The appeal is sustained.