

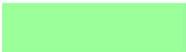


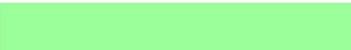
U.S. Citizenship
and Immigration
Services

(b)(6)



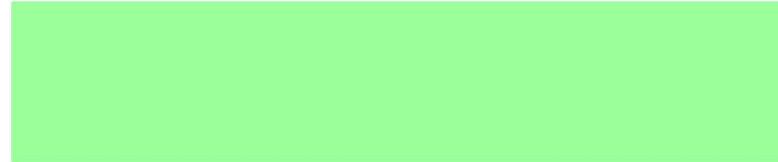
Date: OCT 14 2014 Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Applicant: 

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the waiver application and 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 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 to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States with his lawful permanent resident spouse.

The 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 Director* dated February 12, 2014.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the director erred by not finding that the spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. Although the applicant's attorney indicated in the Form I-290B that a brief would be submitted on appeal, no additional evidence and/or brief was provided on appeal. The record contains statements from the applicant, his spouse and a daughter; medical records for one of the applicant's daughters; academic records for both of the applicant's daughters; letters of support from family, friends, and community members; financial documentation including letters regarding the applicant's employment; and country 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:

- (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 attempted to enter the United States on June 2, 1994, with a passport and B-2 visitor visa issued in the name of another person. According to the applicant's statement on his Form I-601, he withdrew an application for admission and departed the United

States prior to a hearing on an asylum application. USCIS records indicate that the applicant withdrew an application for admission before an Immigration Judge on August 11, 1994 and no exclusion order was issued. The applicant subsequently departed the United States, but indicates on his Application to Adjust Status (Form I-485) that he reentered the United States on September 16, 1995 without inspection. The applicant has not contested the finding that he is inadmissible for 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. 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 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. *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.

The applicant states that if he returned to Pakistan it would be emotionally devastating and a financial disaster for his spouse. The applicant and his spouse both state that the spouse is not a good driver so she depends on the applicant to take their daughters to the doctor, school, and mosque activities. The spouse states that she is not good with English so the applicant attends to school matters, communicates with the daughters’ teachers and doctors, and speaks with professionals for car loans and credit cards. The applicant states that it would be difficult for him to find employment in Pakistan that can support the family in the United States because he does not have work experience there. The spouse states that with her monthly earnings it would be difficult to cover expenses without the applicant’s support, and that because of the cost of travel to Pakistan it would be difficult for her to visit the applicant. She further states that they are a close-knit family, she and the applicant have never been apart more than one week since they married, and the applicant is her only emotional support.

Both the applicant and his spouse state that one daughter suffers from epistaxis, allergy-related nose bleeds, and anemia. The spouse states that she took the daughter to visit Pakistan, but the poor air quality forced her to visit a hospital emergency room twice within five days, so they returned to the United States. Medical documentation submitted to the record shows that the applicant’s daughter is treated for perennial allergic rhinitis and epistaxis, has iron deficiency anemia, and needs to be under continuous observation.

In their statements the applicant and his spouse note the achievements and awards of their daughters in school and at their mosque, submitting documentation noting their accomplishments, and further assert that the daughters’ educational opportunities are in the United States and that they cannot read or write Urdu, the language of most schools in Pakistan. The applicant and his spouse state that the family are Shia Ismaili Muslims, which they describe as a minority in Islam and in Pakistan and

known as being modern, and they promote equality for females in work and education and women do not cover their faces. They state that Sunni Muslims and Taliban extremists in Pakistan disagree with their practices, and have kidnapped Shia and attacked local mosques and schools. They state that they do not want their daughters to live this way, covering their faces and being unable to freely choose their mosque and religious practices.

The applicant's spouse further states that she cannot relocate to Pakistan, as she could lose her lawful permanent resident status in the United States and that it would be difficult for her to find employment in Pakistan as a woman with limited education.

According to the U.S. Department of State, terrorists and criminal groups regularly resort to kidnapping for ransom. It states that members of minority communities have been victims of targeted killings and accusations of blasphemy, a crime that carries the death penalty in Pakistan, and that places of worship have frequently been targeted for attack by terrorists. *See Travel Warning* dated August 8, 2014. The Department of State further reports that militants in Pakistan killed more than 400 Shia Muslims in sectarian attacks in 2013. *See International Religious Freedom Report for 2013*. The record also contains news reports describing the frequent attacks on the Shia minority by Sunni militant groups in Pakistan.

The Department of State also notes that adequate basic non-emergency medical care is available in major Pakistani cities but is limited in rural areas. It states that facilities in the cities vary in level and range of services, resources, and cleanliness, and U.S. citizens may find them below U.S. standards. It further states that effective emergency response to personal injury and illness is virtually non-existent in most of Pakistan, that many U.S.-brand medications are not widely available, and that there is a significant presence of fake pharmaceuticals in Pakistan. *See U.S. Department of State, Bureau of Consular Affairs, Country Information-Pakistan*, updated September 22, 2014.

The applicant and spouse reference hardship to the applicant's children if the waiver application were denied. We note that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section (212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Here the record also establishes that the applicant's children were born in the United States, are integrated into the lifestyle and educational system, achieving well in school, extra-curricular, and religious activities. The Board of Immigration Appeals (BIA) found that a 15-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). We find *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to Pakistan would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. The applicant's spouse would also be concerned about the health of one daughter, particularly

given her experience when visiting Pakistan, as well as their physical safety because she fears religious extremists in Pakistan as she considers her family's practices to be modern. Alternatively, were the children to remain in the United States, the applicant's spouse would experience hardship due to long-term separation from her children.

In the present case we find the record to establish that the applicant's spouse would experience extreme hardship due to separation from the applicant or if she were to relocate to Pakistan to reside with the applicant due to his inadmissibility. The applicant's spouse is concerned about her ability to manage her family without the applicant's presence in the United States, but also fears relocating to Pakistan as she would be unlikely to find employment, fears for her safety and the health and safety of her children there, and fears losing her lawful permanent residence status in the United States. A lengthy departure from the United States could cause her to lose her U.S. lawful permanent resident status. See Section 223 of the Act, 8 U.S.C. § 1203.

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.

In *Matter of Mendez-Morales*, 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.

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 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 in this matter are the hardships the applicant's lawful permanent resident spouse and U.S. citizen children would face if the applicant is not granted this waiver, the applicant's support from his spouse and friends in the United States, his volunteer activities within the community and at his children's school, his long-term employment and payment of taxes, his apparent lack of a criminal record, and the passage of more than 20 years since his immigration violation. The unfavorable factors in this matter are the applicant's attempted entry to United States by misrepresentation, subsequent reentry without inspection, and unlawful presence in the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and 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.