



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: MAR 30 2015 Office: SAN FRANCISCO, CA

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a horizontal line.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, San Francisco, California, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant, a native and citizen of Pakistan, 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 immigration benefits in 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), in order to remain in the United States with his lawful permanent resident spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, May 15, 2014.

On appeal, the applicant contends that his spouse would suffer hardships that, when considered in the aggregate, rise to the level of extreme hardship. The applicant submits additional evidence of hardship to the applicant's spouse.

The record includes, but is not limited to, the following documentation: statements from the applicant and the applicant's spouse; medical and psychological documentation for the applicant's spouse; financial documentation; letters of reference; documentation of removal proceedings; other applications and petitions; and country conditions information on 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.

The record indicates that the applicant initially entered the United States on September 16, 1994. On December 15, 1994, the applicant submitted an application for asylum in the United States with false information and using a false identity. The applicant states that he obtained the services of an agent in order to get a work permit and a driver's license, and it was the agent who changed his name and submitted the asylum application on his behalf. The record indicates that the applicant was issued a passport at the Pakistani consulate in New York under the false identity on August 8, 1996. The applicant's asylum case was referred to an immigration judge. The applicant subsequently withdrew his asylum application, and on June 16, 1997 the immigration judge granted the applicant voluntary departure until October 16, 1997.

On February 4, 1997, a Form I-360, Petition for Amerasian, Widow, or Special Immigrant was submitted on behalf of the applicant as a religious worker, using the applicant's false identity. The record indicates that the applicant never followed up on this application submitted on his behalf.

The Field Office Director also found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for making material misrepresentations regarding the dates of his departures from the United States in order to show that he did not overstay his periods of authorized stay in the United States. The Field Office Director's decision states that the applicant departed the United States in May 1998, reentered the United States in July 1998, and departed again in September 1999. The decision states that when the applicant returned to the United States in November 1999, the applicant used a passport with a fake stamp to avoid the issue of overstaying his visa. The decision states that the applicant returned to Pakistan in February 2003, and when applying for a U.S. visa in June 2003, he again used a fake stamp in his passport to show he departed the United States before the six months authorized stay expired, and made false statements to the U.S. consular officer regarding his prior entries and departures from the United States.<sup>1</sup>

The applicant does not contest the findings of his inadmissibility under section 212(a)(6)(C)(i) of the Act. In light of the evidence of record, we therefore affirm the Field Office Director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and requires a waiver under section 212(i) of the Act.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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

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<sup>1</sup> The record therefore indicates that the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year. We further note that in the applicant's December 1, 2004, sworn statement, he admits he was employed in the United States without authorization, and while he was present in B-1 / B-2 status. As we find the applicant to be eligible for a waiver of inadmissibility under section 212(i) of the Act for misrepresentation, the applicant is also eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act for being unlawfully present in the United States.

insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident wife is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1993), (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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 asserts that his spouse will suffer medical hardship if she is separated from him. The record indicates that the applicant's spouse is currently under the care of a physician for multiple medical conditions which include chronic low back pain, chronic fatigue syndrome, iron deficiency anemia, hypothyroidism, dizziness, and arthropathy. The physician's statement, dated July 10, 2014, indicates that due to the nature of the medical conditions of the applicant's spouse, she requires the support of the applicant.

The applicant further asserts that his spouse will suffer financial hardship if the waiver application is not approved. The applicant's spouse is 49 years old, and has four children between the ages of 13 and 21. The applicant's spouse arrived in the United States and received her lawful permanent resident status in November 2012. The record includes a copy of the 2013 federal income tax return for the applicant's spouse, which indicates that the applicant is the sole wage-earner for the family. The applicant states that his spouse has always been a housewife, and has never held a job outside the home.

In addition, the applicant asserts that his spouse will suffer psychological hardship if the waiver application is not approved, stating that she suffers from post-traumatic stress disorder, panic disorder, and depression. The record includes a psychological examination for the applicant's spouse indicating that she suffers from panic disorder and depression, and that it is crucial for the applicant to be with the family, as his spouse is unable to care for herself and her children in the applicant's absence, and that separation from the applicant will exacerbate her psychological and physical condition.

The record establishes that if the waiver application were denied, the applicant's spouse would experience medical, financial, and emotional hardship as a result of loss of the applicant's income and support, and the separation from her family. We also note that the spouse's emotional hardship is viewed in light of the fact that she has been married to the applicant for over 20 years. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she remained in the United States without the applicant.

With respect to relocation, we note that the applicant's spouse was born in Pakistan and is familiar with the language and customs of that country. The record indicates that the applicant's spouse has strong family ties to the United States. Her brother is a U.S. citizen, and her parents have been living in the United States since 2000, her father is a U.S. citizen and her mother is a lawful permanent resident. In addition, she has three U.S. citizen children, and one lawful permanent resident son.

The applicant expressed concern regarding the safety of his spouse if she relocates to Pakistan. The record reflects that the applicant and his spouse were victims of criminal activity while in Pakistan. Furthermore, on February 24, 2015, the U.S. Department of State issued a travel warning for Pakistan, warning U.S. citizens to defer all non-essential travel to Pakistan, stating that terrorist attacks frequently occur against civilian, government, and foreign targets, and that terrorists and criminal groups regularly resort to kidnapping for ransom. *See Pakistan Travel Warning, U.S. Department of State*, dated February 24, 2015.

Based on the evidence in the record, including the strong family ties the applicant's spouse has in the United States and the security threats she would face in Pakistan, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Pakistan to reside with the applicant.

Thus, the record establishes that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). We must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and

humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's lawful permanent resident spouse and his lawful permanent resident child and three U.S. citizen children would face if the applicant were returned to Pakistan, regardless of whether they accompanied him or remained in the United States, the fact that the applicant has resided in the United States since 2004 with no apparent criminal record, and letters of reference on his behalf.

The unfavorable factors in this matter include the applicant's misrepresentations in immigration matters in the United States, evidence of his employment without authorization, and his unlawful presence in the United States prior to 2004.

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.