**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

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

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[redacted]

FILE: [redacted] Office: ROME, ITALY Date: SEP 2 2 2010

IN RE: [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) and under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the District Director, Rome, Italy, and 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 giving a false name and date of birth to border patrol agents on August 10, 2000. The applicant was also found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of 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 and seeking readmission within ten years of his last departure from the United States. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility to reside in the United States with his family.

In a decision dated March 27, 2008, the district director found that the applicant failed to prove that his inability to immigrate to the United States would result in extreme hardship to his qualifying relative. The application was denied accordingly.

In a statement on appeal, counsel states that the district director erred in denying the applicant's waiver application. He states that the applicant's wife and children are residing in Pakistan where it is very difficult for them to live. He states that he is submitting a medical certificate concerning the health of the applicant's son and an affidavit from the applicant's wife.

The record indicates that on August 10, 2000 the applicant was apprehended by border patrol agents after entering the United States from Canada without inspection. The record indicates that during questioning, the applicant provided a sworn statement in which he stated his name as Ali Hayder and his birth date as November 4, 1974. The record indicates that on April 6, 2001 the applicant was ordered removed in abstentia, on March 14, 2003 was arrested, and on April 11, 2003 was removed to Pakistan.

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.

The AAO finds that the applicant's misrepresentation does not make him inadmissible under section 212(a)(6)(C) of the Act because it was not material or made to obtain a benefit under the Act. During the period in which the applicant misrepresented his identity, he was not attempting to procure a benefit under the Act, nor did his misrepresentation impact his eligibility for any benefit under the Act. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 US 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409(BIA 1962; AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). The applicant's misrepresentation of his identity did not make him eligible for any benefit under the Act

or prevent his removal from the United States. Although the applicant's misrepresentation of his identity may have been motivated by the desire to conceal the fact of his attempted unlawful entry when procuring a benefit at some point in the future, the applicant acknowledged his illegal entry and removal when he sought such a benefit. On his Application for an Immigrant Visa and Alien Registration (Form DS-230, Part II) the applicant admitted that he crossed the border illegally into the United States, failed to attend a removal hearing, and was removed. Thus, the AAO finds that the applicant has not willfully misrepresented a material fact to procure a benefit under the Act and, as a result, is not inadmissible under section 212(a)(6)(C)(i) of the Act.

However, the record does indicate that the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 and seeking readmission within ten years of his last departure from the United States.

The record indicates that the applicant entered the United States without inspection on August 10, 2000. The applicant remained in the United States until April 11, 2003. Therefore, the applicant accrued unlawful presence from August 2000 until April 2003. In applying for an immigrant visa, the applicant is seeking admission within ten years of his April 2003 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 to the satisfaction of the Attorney General [Secretary] 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.

The AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant or his children is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios are possible should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action to be taken is difficult, and it is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id. See also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

The record of hardship includes: two statements from the applicant's spouse, a medical note concerning the health of the applicant's children in Pakistan, and a psychological evaluation.

In a statement dated April 20, 2008, the applicant's spouse states that she, along with her three-year-old son and one-and-half-year-old daughter, relocated to Pakistan to be with the applicant. She states that she cannot return to the United States because she would have to live with her parents, which she cannot do as it is an unnecessary burden on her father. She states that she is going through the worst part of her life in Pakistan for the following reasons: the applicant's income is not good; her father in the United States cannot send her money because he has a family of his own to support; her children are suffering physically due to poor quality drinking water and polluted environment requiring that she takes them for medical treatment on a weekly basis; and her children will not go to school in the United States. The applicant's spouse also states that the deteriorating law and order in Pakistan makes it so that she cannot arrange for recreational or healthy activities for herself and her children and that she spent most of her youth in the United States, opening her eyes to a liberal, democratic, and safe homeland. She states that she cannot live in Pakistan anymore.

In a statement dated April 20, 2007, before the applicant relocated, the applicant stated that she was living with her parents in New Jersey but that she was a burden both socially and financially. She stated that upon his return to Pakistan, the applicant started a business selling furniture but that because of variable social and economic conditions in Pakistan his earnings were not sufficient to manage himself in Pakistan and she and the children in the United States. The applicant's spouse stated that her son was acting out as a result of being separated from his father and she worried that her daughter will do the same. She stated again that she had been living in the United States for ten years and did not want to go back to Pakistan nor did she want her children raised in Pakistan. The applicant's spouse also stated that since being separated from the applicant, she was feeling depressed and anxious. Finally, she stated that in addition to his furniture showroom the applicant inherited properties that they would sell in order to move to the United States and open a showroom. The AAO notes that the record contains a medical certificate from a hospital in Islamabad, dated April 19, 2008, which states that the applicant's children have been patients there since January 2007. The certificate states that the children were suffering from cold chest congestion with pollen allergy due to environmental effects and unsuitable drinking water. The certificate states that the children are becoming sensitive to different diseases everyday.

The record also includes a psychological evaluation dated December 10, 2006 and completed by This evaluation includes personal statements from the applicant's spouse, the applicant, the applicant's spouse's parents, and the applicant's spouse's siblings. These statements, as relayed through , express the hardship the applicant's spouse is experiencing, their close family ties, and fears about relocating to Pakistan. finds that the applicant's spouse and the applicant are suffering from depression and anxiety as a result of the applicant's immigration situation. He also finds that the applicant's spouse has a dependent personality in that she has difficulty in making everyday decisions without an excessive amount of advice and reassurance from the applicant. He states that the applicant's spouse admits feeling uncomfortable or hopeless when she is alone and has exaggerated fears of not being able to care for herself and her children without the applicant. The AAO notes that a psychological evaluation completed after the limited interaction of one meeting with an applicant and his or her qualifying relative(s) is often given less weight in establishing hardship. However, the psychological evaluation completed by contains a high level of detail, details which are consistent with other evidence submitted as part of the record. Thus, given the detail in the evaluation and the corroborating evidence in the record, the AAO finds that the conclusions drawn in the evaluation by are of probative value.

The AAO also notes that although the applicant failed to submit documentation of country conditions in Pakistan, the U.S. Department of State has issued a travel warning for Pakistan, dated July 22, 2010. In addition, the recent flooding in Pakistan will be considered in evaluating hardship to the applicant's spouse. The travel warning states that the presence of Al-Qaida, Taliban elements, and indigenous militant sectarian groups pose a potential danger to U.S. citizens throughout Pakistan. The warning also states that even flare-ups of tensions and violence in many areas of the world increase the possibility of violence against Westerners in Pakistan. The warning adds that the Government of Pakistan has heightened security measures, particularly in the major cities and threat reporting indicates terrorist groups continue to seek opportunities to attack locations where U.S.

citizens and Westerners are known to congregate or visit, such as shopping areas, hotels, clubs and restaurants, places of worship, schools, or outdoor recreation events. The warning also states that in Islamabad in 2009 and 2008 terrorists executed coordinated attacks on the United Nations World Food Program's office, a university, a restaurant, and an international hotel with U.S. citizens being victims of such attacks. In addition to terrorists' attacks, several U.S. citizens throughout Pakistan have been kidnapped for ransom or for personal reasons with kidnappings of Pakistanis also increasing dramatically across the country, usually for ransom.

Given the violence and instability in Pakistan and in Islamabad, where the applicant's spouse is residing, the AAO finds that the applicant's spouse, who is residing in Islamabad with two small children, would suffer extreme hardship as a result of relocating. Exacerbating the already unstable situation in Pakistan is the flooding which is affecting most of the country. The U.S. Department of State has indicated that the floods are causing enormous health concerns including problems of stagnant water and shelter and that the situation is still deteriorating in some parts of the country. Millions have been displaced and millions are in need of humanitarian assistance.

Moreover, the record indicates that the applicant's children are continually having health problems while living in Pakistan, which would reasonably make the situation more stressful for the applicant's spouse. Thus, the AAO finds that the applicants spouse will suffer extreme hardship as a result of relocating to Pakistan.

The AAO recognizes that evidence in the record is somewhat contradictory concerning the financial situation of the applicant's family in Pakistan. However, the finding of extreme hardship in this case is primarily based on security, safety, and health conditions in Pakistan rather than on any financial hardship.

The AAO also finds that the applicant's spouse will suffer extreme emotional hardship as a result of being separated from the applicant. The applicant's spouse has stated that she is suffering from depression and anxiety as a result of being separated from the applicant. The psychological evaluation states that the applicant's spouse is particularly dependent on the applicant, finding it difficult to make everyday decisions without the applicant's approval. Additional statements made by the applicant, his spouse, and other family members corroborate this finding. Further evidence that separation was causing the applicant's spouse's extreme difficulties is the fact that she relocated with her two children to Pakistan.

Thus, the AAO finds that the applicant has established that his U.S. citizen spouse will suffer extreme hardship as a result of his inadmissibility.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 section 212(h)(1)(B) 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). The AAO must then, "[B]alance 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 adverse factor in the present case is the applicant's immigration record. In 2000 the applicant entered the United States without inspection. He gave a false name and birth date to the immigration officers who apprehended him. The applicant then failed to appear for his removal hearing. Finally, the applicant was removed from the United States in 2003 after three years of living in the United States without lawful status.

The favorable factors in the present case are the extreme hardship to the applicant's U.S. citizen wife and children if he were to be denied a waiver of inadmissibility; the applicant's financial support of his family; the applicant's lack of a criminal record; and the passage of seven years since the applicant violated U.S. immigration law.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case currently outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.