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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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DATE: NOV 14 2011 OFFICE: HARTFORD FILE: [redacted]

IN RE [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hartford, and 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 entered the United States with a B1 visa on April 18, 1994, with authorization to remain until May 17, 1994. The applicant remained in the United States beyond that date and filed an I-485 application for adjustment of status on May 25, 2000. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Immigration and Nationality Act (the Act), to May 25, 2000. Based on his unlawful presence, the applicant was denied advance parole on November 2, 2000 by the District Director, Hartford. The applicant responded by submitting a false New York address with the New York City INS office and applying for advance parole. The applicant was granted advance parole based upon this misrepresentation and voluntarily departed the United States in October 2001. The applicant returned to the United States in December 2001. The applicant was found to be inadmissible to the United States 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 was also 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 having procured admission to the United States through fraud or misrepresentation. The applicant is a beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse and denied the application accordingly. *See Decision of the Field Office Director*, dated December 9, 2008.

On appeal, counsel for the applicant contends that the applicant's spouse will suffer extreme emotional and financial hardship if she is separated from her husband. Counsel also asserts that the applicant's spouse cannot accompany the applicant to Pakistan because she is a native and citizen of the United States who is unfamiliar with Pakistan. Counsel further states that the applicant's spouse would not be allowed to practice Catholicism in Pakistan and that she would be in fear for her safety based upon country conditions.

In support of the waiver application and appeal, the applicant submitted identity documents, legal documents, tax returns, family photographs, affidavits from the applicant and the applicant's spouse, financial documents, documents from the applicant's stepchild's school, and background information concerning country conditions. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(C) Misrepresentation

(i) In general - 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:

(i) Admission of Immigrant Inadmissible for Fraud or Willful Misrepresentation of Material Fact

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the

> alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 applicant's qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant's stepchild would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's stepchild as a factor to be considered in assessing hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the applicant's stepchild will not be separately considered, except as it may affect the applicant's spouse.

In the present case, the record reflects that the applicant is a forty-nine year-old native and citizen of Pakistan who was unlawfully present in the United States from April 1, 1997 to May 25, 2000 and submitted a false address to secure a grant of advance parole. The applicant's spouse is a forty-nine year-old native and citizen of the United States. The applicant and his wife live in New Haven, Connecticut with his wife's son.

The applicant's spouse asserts that she would be unable to financially support herself and her son in the absence of her husband. *See Affidavit from* dated January 15, 2009. The applicant's spouse states that she is employed as a hairdresser and also works part-time for the applicant's store. *Id.* The applicant's spouse claims that she since she works part-time for the stores owned by her husband, she would lose this employment if her husband departed, as the businesses would not survive. *Id.* She also claims that if she worked full-time as a hairdresser, she would only make approximately fifteen to twenty thousand dollars a year, at most. *Id.*

It is noted that G-325A forms submitted by the applicant and his spouse reflect that the applicant is an owner of Greatway Food Store, as of February 2004. *See Form G-325A from* dated February 5, 2006; *See Form G-325A from* dated February 8, 2006. The forms further reflect that the applicant's spouse is a cashier as of July 2004, and is also self-employed as a hairdresser for Creative Design; the applicant's G-325A form reflects that he was an owner from January 2002 to March 2005. *Id*; *See Form I-864*, dated February 16, 2006. Accompanying the applicant's spouse's I-864 form was a letter from the owner confirming that the applicant's spouse is an employee with a salary of three hundred dollars per week. *Letter from* The applicant, his spouse, and counsel state that the applicant is the owner

of two convenience stores, but it is noted that the supporting evidence in the record confirms only the applicant's ownership of the

In addition to her part-time work in a store, the applicant's spouse is self-employed as a hairdresser for , as of January 2005. *See Form G-325A from* dated February 5, 2006; *See Form I-864*, dated February 16, 2006. From September 1992 to December 2004, the applicant's spouse was a hairdresser and owner of *Id.* The applicant's spouse asserts that the applicant's stores would not survive if he were not here because she does not know how to perform the primary duties needed to keep businesses going. *See Affidavit from* dated January 15, 2009. There is no explanation as to why the applicant's spouse would be unable to hire a manager, if necessary, for her husband's stores.

The applicant claims that he and his wife earned only $39,000 in income in 2007, but there is no supporting documentation to support that assertion. *See Affidavit from* dated January 15, 2009. There is further no documentation to support the applicant's claim that he previously made some attempts to sell one of his stores, but received no offers. *Id.* The most recent financial documentation submitted by the applicant indicates that he and his wife earned $90,030 in 2005. *See Form I-864*, dated February 16, 2006.

There is no evidence to support the applicant's spouse's assertion that she would only make twenty thousand dollars, at most, if she worked as a full-time hairdresser. *See Affidavit from* dated January 15, 2009. The applicant's spouse currently works part-time for a store and as a hairdresser, but there is no evidence concerning the number of hours she works as a hairdresser. *Id.* It is noted that prior to the applicant's spouse's marriage to the applicant, she supported herself as an owner and hairdresser of *See Income Tax Returns for 2003, 2004.* It is further noted that updated information concerning the applicant or his spouse's financial status has not been submitted since his initial Form I-601 filing in 2006. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the courts have found that though economic detriment is a factor for consideration, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant's spouse asserts that her husband is an integral part in the lives of herself and her son. *See Affidavit from* dated January 15, 2009. She claims that the departure of the applicant would cause devastation for her son, especially since he does not have a relationship with his biological father. *Id.* It is noted that the record does not contain an affidavit or letter from the applicant's stepson or an assessment concerning his psychological condition. It is further noted that the applicant's stepson is not a qualifying relative in the context of this application so that his hardship will only be considered insofar as it affects the applicant's spouse. There is not sufficient evidence on the record to find that the applicant's spouse will suffer a level of emotional

hardship in the applicant's absence that goes beyond the common results of inadmissibility or removal.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists

The applicant's spouse asserts that she cannot relocate to Pakistan because she is a native of the United States who is terrified at the thought of even visiting Pakistan. *See Affidavit from* dated January 15, 2009. She states that she cannot speak Urdu and she is not familiar with the culture of Pakistan. *Id.* The applicant's spouse further states that she is very close to her family and the majority of its members live in Connecticut. *Id.* In fact, the applicant's spouse claims that she, the applicant, and her son, lived with her father while their house was being repaired. *Id.* The applicant's spouse also expressed concern that she would not be able to practice Catholicism in Pakistan. *Id.* It is noted that the Department of State recently issued travel warnings concerning Pakistan:

> The presence of al-Qaida, Taliban elements, and indigenous militant sectarian groups poses a potential danger to U.S. citizens throughout Pakistan. Terrorists and their sympathizers regularly attack civilian, government, and foreign targets, particularly in Khyber Pakhtunkhwa (KP) province. The Government of Pakistan has heightened security measures, particularly in the major cities. 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.
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> . . . .
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> Reports of religious intolerance rose in 2010-2011. Members of minority communities, including a U.S. citizen, were victims of targeted killings. Accusations of blasphemy—a crime that carries the death penalty in Pakistan—against Muslims as well as non-Muslims also increased. Foreign nationals including U.S. citizens on valid missionary visas have encountered increased scrutiny from local authorities since early 2011. Local authorities are generally less responsive and do not operate with the level of professionalism that U.S. citizens may be accustomed to in the United States.

Travel Warning-Pakistan, U.S. Department of State, dated August 8, 2011.

The record establishes that the applicant's spouse is a forty-nine year-old native and citizen of the United States who is unfamiliar with the country of Pakistan. The applicant's spouse indicates that she is very close with her family and that the majority of its members live in her state of

residence, Connecticut. The record also contains evidence of the applicant's spouse's long-term employment in her field of expertise. The applicant's spouse stated that she would be afraid to live in Pakistan with her son and a travel advisory was issued by the Department of State concerning Pakistan. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to the Pakistan, rise to the level of extreme hardship.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) and 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 proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.