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



H6

Date: **MAY 11 2012**

Office: **NEW DELHI**

FILE:

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), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

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,

Maria Yeh
for

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Pakistan who attempted to procure entry to the United States in 1991 by presenting an altered passport. In August 1991, the applicant was ordered excluded and deported. In March 1995, the applicant filed a motion to reopen/reconsider the exclusion order and for change of venue. In August 1995, an immigration judge found that proper notice had not been provided. The motion to reopen and motion for change of venue were granted. Exclusion proceedings were once again scheduled in November 1995. The applicant was ordered excluded and deported on November 2, 1995. The applicant did not depart the United States until November 2002. The applicant was thus 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 having attempted to procure entry to the United States by fraud or willful misrepresentation, and 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. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility to reside in the United States with his U.S. citizen spouse and children, born in 1996 and 2001.

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 Ground of Inadmissibility (Form I-601) accordingly.¹ *Decision of the Field Office Director*, dated September 29, 2009.

On appeal, counsel for the applicant submits the following: a brief; an affidavit from the applicant's eldest sister; an affidavit from the applicant's son; and a copy of an AAO decision from May 2009. In addition, on December 16, 2009, the AAO received a supplemental letter from the applicant's spouse in support of extreme hardship. The entire record was reviewed and considered in rendering this decision.

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

¹ In her decision to deny the applicant's Form I-601, the field office director concurrently denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. The basis for the I-212 filing by the applicant was his removal in November 2002. *Notice to Alien Ordered Removed/Departure Verification*, dated November 20, 2002. As the record indicates that the applicant has remained outside of the United States since his removal in 2002, he has satisfied the five year bar and no longer needs an approved Form I-212. As such, the Form I-212 is deemed to be moot.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

....

- (ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) 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.

Section 212(a)(9) 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 in June 2001, the applicant was charged with Assault and Battery. The applicant was placed on pretrial probation from September 2001 until September 2002. The issue of whether or not the applicant was convicted for a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act has not been addressed. Nevertheless, because the applicant is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B) of the Act and demonstrating eligibility for a waiver under sections 212(i) and 212(a)(9)(B)(v) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or his U.S. citizen children can be considered only insofar as it results in hardship to a qualifying relative. 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 applicant’s U.S. citizen spouse contends that she will experience hardship if she remains abroad with her husband due to his inadmissibility. The record establishes that the applicant’s spouse has been residing with the applicant in Pakistan. To begin, the applicant’s spouse contends that living with her husband in Pakistan is causing her emotional distress. She explains that she has been residing in the United States since 1984 and all of her relatives reside in the United States and she thus does not have a support system in Pakistan. In addition, the applicant’s spouse details that her husband has not been able to obtain gainful employment in Pakistan due to the problematic economic conditions. Finally, the applicant’s spouse maintains that she suffers from numerous medical conditions, including epilepsy, mood disorder and diabetes and is unable to obtain affordable and effective medical treatment in Pakistan. *Letter from* [REDACTED] dated November 24, 2009.

In a separate statement, the applicant’s eldest sister explains that her brother and his family have been suffering in Pakistan. She explains that her sister-in-law is unable to obtain appropriate and affordable medical treatment in Pakistan. In addition, she notes that her brother has not been able to work for the past seven years due to the prevailing economic recession in Pakistan and she has had to assist in their financial support. Moreover, the applicant’s sister details that due to the high costs of education in Pakistan, the applicant’s son, [REDACTED] is residing with her and attending school in Houston. Due to the family separation, she outlines that her nephew greatly misses his parents

and sibling. Finally, the applicant's sister references the problematic security situation in Pakistan. *Affidavit of* ██████████ dated November 23, 2009.

The applicant's son submits a statement explaining the hardships he is experiencing as a result of long-term separation from his parents and sister. He notes that he is unable to afford to travel to Pakistan to see his family and he fears for his family's safety as a result of bomb blasts in the city where his family lives. *Affidavit of* ██████████ dated November 23, 2009.

Medical documentation establishing the applicant's spouse's numerous medical conditions and medications prescribed to her have been provided. The U.S. Department of State confirms that U.S. citizens may find medical facilities in Pakistan to be below U.S. standards. In addition, many medications are not available and/or the quality of locally produced medications is uneven. *Country Specific Information-Pakistan, U.S. Department of State*, dated October 31, 2011. Moreover, the U.S. Department of States maintains that extreme poverty and underdevelopment are key concerns in Pakistan. *Background Note-Pakistan, U.S. Department of State*, dated October 6, 2010. Finally, the U.S. Department has issued a Travel Warning for Pakistan, warning U.S. citizens of the risks of travel to Pakistan. *Travel Warning-Pakistan, U.S. Department of State*, dated February 2, 2012. The record reflects that the cumulative effect of the emotional, financial and medical hardship the applicant's spouse would experience were she to remain abroad due to the applicant's inadmissibly rises to the level of extreme. The AAO thus concludes that were the applicant's spouse to remain abroad as a result of her husband's inadmissibility, she would suffer extreme hardship.

With respect to residing in the United States while her husband remains abroad due to his inadmissibility, counsel maintains that the applicant's spouse is unable to financially support herself and her children in the United States without her husband. Counsel contends that the applicant's spouse suffers from severe medical conditions which have resulted in her never being able to work. In addition, counsel contends that the applicant is the primary caregiver for his wife and without him by her side, she will not be able to care for herself and her children. *Brief in Support of Appeal*, dated November 24, 2009.

The record establishes the applicant's spouse's history of mental illness, including mood disorder and bipolar illness. The record further establishes that the applicant's spouse is insulin-dependent as a result of her diabetes and has been prescribed medications to treat seizures and mania related to bipolar disorder. Moreover, documentation in the record establishes that the applicant's spouse sought shelter in 2008 as a result of being homeless and unemployed. Further, the record establishes that a child abuse/neglect investigation was initiated against the applicant's spouse in the past, resulting in her referral for psychological treatment. Based on a totality of the circumstances, the AAO finds that the applicant's spouse needs her husband's financial, emotional and physical support and were she to reside in the United States while her husband remains abroad, she would experience extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the

applicant unable to reside in the United States. Accordingly, the AAO finds 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 she 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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO 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 hardship the applicant's U.S. citizen spouse and children would face if the applicant were to remain in Pakistan, regardless of whether they accompanied the applicant or stayed in the United States, his community ties and his periods of gainful employment. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation in 1991, the applicant's removal order and his failure to leave timely, periods of unlawful presence and unlawful employment while in the United States, and his pre-trial probation for a one year period after being charged with Assault and Battery.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

ORDER: The appeal is sustained. The waiver application is approved.