

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

[Redacted]

FILE:

[Redacted]

Office: NEWARK, NJ

Date:

JUL 08 2005

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)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, NJ, 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 was 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 seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse who petitioned for him in this case.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 14, 2004.

On appeal, counsel asserts that the district director grossly abused his discretion as more than sufficient evidence of extreme hardship was presented, failed to consider the depressive disorder and suicidal tendencies of the applicant's spouse, failed to consider the hardship to the applicant's spouse in raising her two daughters without the financial or emotional help of the applicant and failed to consider the country conditions in Pakistan and the effect of those conditions on the applicant's spouse. *Form I-290B*, dated February 4, 2004.

In support of these assertions, counsel submits a brief, dated March 10, 2004. The record also contains previously submitted documents including a psychologist's report on the applicant's spouse and children; a statement from the applicant; a statement from the applicant's spouse and the 2002 Department of State Country Reports on Pakistan. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant attempted to enter the United States in 1993 under a false name and with a photo-substituted passport and visa. As a result of this prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act .

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.

Section 212(i) of the Act provides that:

- (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.

Counsel is correct in citing the precedent case used to determine extreme hardship which is *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). Therefore, an analysis under the factors mentioned in *Matter of Cervantes-Gonzalez* is appropriate for this decision.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The record does not reflect the presence of lawful permanent resident or United States citizen family ties to this country other than the daughters of the applicant's spouse nor is there any mention of the qualifying relative's family ties outside of the United States.

In his brief, counsel first asserts that the district director's decision was a gross abuse of discretion as more than sufficient evidence of extreme hardship to the applicant's spouse was presented. *Brief in Support of Appeal*, at 2, dated March 10, 2004. Counsel refers to an affidavit from the applicant's spouse and a psychological evaluation of the applicant's spouse and children as ample documentation to support a claim of extreme hardship. *Id.* The affidavit from the applicant's spouse stated that she has been crying constantly, has lost considerable weight, has difficulty sleeping and concentrating and her children have been crying and experiencing sleep problems due to her husband's current detention. *Id.* The psychologist's report stated that the applicant's spouse is very depressed due to her husband's detention and may very well make a suicide gesture in the event her husband is removed to Pakistan. *Id.*

Counsel's second assertion, that the district director failed to consider the depressive disorder and suicidal tendencies of the applicant's spouse and dismisses it as collateral damage, further emphasizes his first contention regarding the mental state of the applicant's spouse. Counsel emphasizes the psychologist's report which states that the applicant's spouse is suffering from a major depressive disorder and that she is at a high risk to make a suicide gesture. *Id.* at 4. The AAO is sympathetic to the difficult situation that the applicant has placed his family in. However, there is no evidence in the record to show that the applicant's spouse is receiving any therapy or medication for her depression. The psychologist states a medical problem in his one-time evaluation, however, he offers no medical solution to assist the applicant's spouse with the problem. As the depression is due to the detention of the applicant, residing with the applicant in Pakistan would presumably help the applicant's mental state. Also, there is no evidence that medical treatment for depression is unavailable in Pakistan if the applicant's spouse continues to have problems in Pakistan. The psychologist's letter also mentions that both parents of the applicant's spouse have serious health problems that require her attention, however, there is no medical documentation of these problems.

Counsel's third assertion is that the district director failed to consider the hardship to the applicant's spouse in raising her two daughters without the financial or emotional help of the applicant. *Id.* at 5. Counsel refers to the affidavit of the applicant's spouse which states that the applicant was the sole means of support, working will be difficult for the applicant's spouse as the children come home early from school and she is afraid she will become homeless if the applicant is not released from detention. *See Id.* The psychologist's report indicates that the applicant's spouse was making \$200 per week as a sales clerk and this report was done after the affidavit of the applicant's spouse was taken. Therefore, the applicant's spouse was able to secure a job, but no documentation has been provided to verify her income and her financial obligations in order to show financial hardship to the applicant's spouse if she remains in the United States. Furthermore, counsel does not address the financial impact to the applicant's spouse if she relocates to Pakistan.

Lastly, counsel contends that the district director failed to consider the country conditions in Pakistan and the effect of those conditions on the applicant's spouse. *Id.* at 6. The country reports describe the discrimination and constraints placed on women in Pakistan. *Id.* The AAO notes that the applicant's family would have to adjust to a lower standard of living in Pakistan, however, adjusting to a lower standard of living has been found not to rise to a level of extreme hardship. *See Ramirez-Durazo v. INS*, 794 F. 2d 491, 498 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will experience difficulties if she lives in Pakistan. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Therefore, the applicant's spouse will face the common problems associated with separation from a spouse if she remains in the United States.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch* 21 I & N, Dec. 627 (BIA 1996) held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. [REDACTED]* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant and is sympathetic to her situation. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States and that the district director considered the relevant factors and did not abuse his discretion. Having found the applicant

statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.