

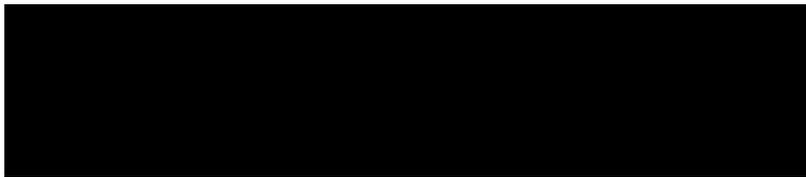
PUBLIC COPY



U.S. Citizenship
and Immigration
Services

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

H2



FILE:  Office: ISLAMABAD

Date: NOV 09 2005

IN RE: Applicant: 

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:

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Islamabad, 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 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 seeking to procure a U.S. visa by fraud or willful 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 enter the United States and reside with his U.S. citizen wife.

The acting officer in charge concluded that the applicant 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 Acting Officer in Charge*, dated May 4, 2004.

On appeal, counsel for the applicant contends that the applicant's wife will suffer economic and emotional hardship if the applicant is prohibited from entering the United States. *Statement on Form I-290B*. Counsel provides that new evidence is available on appeal, as the applicant's wife has been undergoing care from a medical professional for depression resulting from the applicant's absence. *Id.*

The record contains a statement from counsel on Form I-290B; a statement from the applicant's wife in support of the appeal; a statement from the applicant's wife submitted with the initial Form I-601, Application for Waiver of Ground of Excludability; two letters from a doctor regarding the applicant's wife's condition and care; a letter from counsel in support of the appeal; letters from the mother and friend of the applicant's wife; documentation on conditions in Pakistan; the applicant's marriage certificate, and; documentation of the applicant's immigration history. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that in 1994 the applicant attempted to procure a visa by presenting fraudulent documents to a U.S. consular officer in Islamabad, Pakistan. Thus, the applicant made a willful misrepresentation of material facts in order to procure a visa or entry into the United States. Accordingly, the applicant 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). The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

On appeal, counsel for the applicant contends that the applicant's wife will suffer economic and emotional hardship if the applicant is prohibited from entering the United States. *Statement on Form I-290B*. Counsel provides that the applicant's wife is undergoing treatment for emotional difficulties as a result of the applicant's absence. *Id.* The applicant submits two letters from a licensed psychologist, Dr. [REDACTED] in which Dr. [REDACTED] states that the applicant's spouse is suffering from Major Depressive Disorder. *Letter from Dr. Joseph M. Peraino*, dated May 25, 2004. Dr. [REDACTED] expressed his opinion that the applicant's wife's emotional difficulties are in part due to separation from the applicant. *Id.* Dr. [REDACTED] stated that the applicant's wife wishes to live more independently from her parents, yet without the applicant's assistance she lacks the resources to do so. *Id.* In Dr. [REDACTED] follow-up letter a year later, he provided that he saw the applicant's wife infrequently over the previous year, and that, "although her depression had partially subsided, she was still considered depressed." *Letter from Dr. Joseph M. Peraino*, dated February 14, 2005. Dr. [REDACTED] noted that the applicant's wife had previously experienced problems living in Pakistan, yet that she had decided to return there in December 2004 to be with the applicant. *Id.*

The applicant's wife states that she was taking college classes and working part-time, but that she discontinued both activities due to her emotional state. *Statement from Applicant's Wife on Appeal* at 1, dated May 25, 2004. She provides that she is under a doctor's care for depression and she is undergoing therapy. *Id.* She indicates that she has lived in the United States for 11 years, and she came to the country when she was age 10. *Id.* at 2. She explains that, when previously in Pakistan, she developed severe allergies due to the dust and pollution in the air, which required medical attention. *Id.* In her statement submitted with the Form I-601 application, the applicant's wife indicated that she resided with her parents and was a full-time student. *Statement from Applicant's Wife in Support of Form I-601*. She noted that she intends to live in the United States for the rest of her life. *Id.*

Counsel asserts that residing in Pakistan presents a threat to the applicant's wife's "life, liberty, [r]ights and [s]ocial way of life" as conditions are poor there. *Counsel's Letter* at 2, dated April 7, 2005. Counsel notes

that the applicant's wife's family and friends are in the United States, suggesting that she would be deprived of their support if she relocated abroad. *Id.* The mother of the applicant's wife explained that the applicant's wife is in Pakistan, yet it is difficult for her to cope with life there and she only remains for a few months each visit. *Letter from Applicant's Wife's Mother.*

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from entering the United States. Counsel suggests that the applicant's wife will experience significant emotional hardship if she is separated from the applicant, and that she is currently suffering from severe depression. The applicant submits two letters from a licensed psychologist that discuss his wife's mental health. However, Dr. [REDACTED] stated that he saw the applicant's wife infrequently over the previous year, and that her depression had shown improvement as of his last appointment. The letters do not indicate the current severity of the applicant's wife's condition, whether full recovery is expected, or whether continued treatment was recommended. Thus, the letters do not serve as sufficient evidence that the applicant's wife is suffering from unusual mental health consequences that go beyond those normally expected of family members of those deemed inadmissible or excludable.

The applicant's wife explains that her family members are in the United States, implying that she would be deprived of their support and companionship should she relocate to Pakistan. If the applicant's waiver application is denied, the applicant will be placed in the position of choosing whether to live close to her family in the United States, or with the applicant in Pakistan. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant or her family members. However, her situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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.

The applicant's wife stated that she intends to live in the United States for her entire life. However, it is noted that the applicant's wife is presently in Pakistan, and she has visited there before. As the applicant is a native of Pakistan and immigrated to the United States at age 10, it is presumed that she resided there for half of her life and is accustomed to the country's language and culture. While the applicant's wife indicated that on a previous visit she required medical treatment due to allergies, the applicant has submitted no evidence to support that his wife has unusual health consequences associated with being in Pakistan. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Counsel provides that conditions in Pakistan are poor. The AAO acknowledges that Pakistan poses substantial lifestyle changes should the applicant's wife permanently relocate there. However, as a U.S. citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Yet, the applicant's wife may

reside abroad with the applicant if she chooses, thus she is not required to endure the hardship of separation from the applicant as a result of denial of the waiver application.

Counsel suggests that the applicant's wife will endure financial hardship if the applicant is prohibited from entering the United States, as she is unable to work due to her mental health. However, the record contains evidence that the applicant has worked and attended college classes, thus she is employable and has completed some higher education. While the applicant submits an evaluation of his wife's mental health to show that she is hindered by depression, it is noted that Dr. [REDACTED] expressed his opinion that the applicant's wife's depression had partially subsided as of his last appointment with her. While Dr. [REDACTED] as stated that the applicant's wife suffers from depression, he has not indicated that her condition prevents her from future employment, or that recovery is not expected. Further, the applicant's wife has resided with her parents in the United States due to her limited economic means and the fact that she was a full-time college student. Thus, the record reflects that the applicant's wife receives significant financial support from her parents, and she will not be compelled to meet her needs alone in the applicant's absence. The applicant has not asserted that he has provided economic support for the applicant in the United States. As such, it does not appear that the applicant's absence will constitute a change in his wife's economic situation.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from entering in the United States, considered in aggregate, do not rise to the level of extreme hardship. 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(a)(6)(C) 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.