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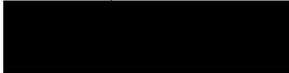
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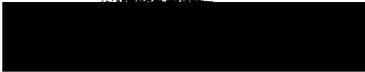
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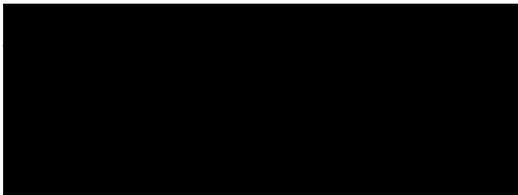
Date: APR 07 2006

IN RE:



PETITION: 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 PETITIONER:



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 District Director, Chicago, Illinois, denied the waiver application, and it 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. She 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 her spouse.

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 February 4, 2004.

The record reflects that, on October 23, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The applicant appeared at CIS' Los Angeles District Office on January 14, 2002. The applicant testified that, in 1998, she entered the United States presenting a passport and U.S. visa that belonged to another.

On January 14, 2002, the district director issued a request for further evidence to the applicant informing her of the need to file the Form I-601 with supporting documentation. On February 13, 2002, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On February 4, 2004, the district director issued a notice of denial of the application as the applicant was inadmissible because she had procured admission to the United States, by fraud or misrepresenting a material fact, and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel contends that the district director erred in finding that the applicant's spouse would not experience extreme hardship upon the applicant's removal from the United States. *Statement In Support of Appeal*, dated February 25, 2004. In support of his contentions, counsel submitted the above-referenced statement in support of appeal, an affidavit from the applicant's spouse, divorce agreement for the applicant's spouse, copies of checks for child support payments, documentation indicating the applicant's spouse's ownership of a U.S. business and a medical letter for the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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

....

- (iii) 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.

The record reflects that, on November 12, 1993, the applicant married her husband, [REDACTED] who was a lawful permanent resident of the United States. [REDACTED] a 15-year old son and a 17-year old daughter that are U.S. citizens by birth from a prior marriage, for whom he was ordered to pay child support. On July 23, 1998, the Form I-130 [REDACTED] on behalf of the applicant was approved. On March 12, 2002, [REDACTED] became a naturalized citizen of the United States. On October 23, 2000, the applicant filed the Form I-485 based on the approved Form I-130. The applicant and her spouse have no children. The record reflects that the applicant was born in Pakistan and [REDACTED] a Pakistan native who became a lawful permanent resident of the United States in 1991 and then a naturalized citizen of the United States in 2002. The record reflects further that the applicant and [REDACTED] in their 40's and that [REDACTED] has no health concerns.

The district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted fraudulent use of a passport and U.S. visa belonging to another to procure admission into the United States in 1998. Counsel does not contest the district director's determination of inadmissibility.

Counsel contends that the district director failed to consider the combined effects of the financial and emotional hardships that [REDACTED] if his wife were to be removed from the United States or if he accompanied her to Pakistan.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful

permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Supra.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980).

There is no evidence in the record that [REDACTED] suffer financial hardship if he were to remain in the United States while the applicant returned to Pakistan. [REDACTED] the sole financial support for the family and there is no indication that the applicant has ever provided financial support for the family.

Counsel asserts [REDACTED] would suffer emotional hardship if he remained in the United States and his wife returned to Pakistan because she is undergoing fertility treatments, which would not be available in Pakistan. In support of this contention, counsel submitted a letter, dated January 28, 2002, from the Cook County Hospital, indicating that the applicant has been treated in regard to infertility since 1998. However, the letter does not give a prognosis for the applicant's condition nor does it indicate what kind of treatment the applicant is undergoing or that she is currently undergoing any treatment. Additionally, there is no evidence in the record to suggest that the treatment the applicant may be undergoing is not available in Pakistan. In his original affidavit, [REDACTED] that he would suffer emotional hardship if he remained in the United States and his wife returned to Pakistan because he "would be worried sick" over the applicant's safety. However, there is no evidence in the record as to how the applicant's safety would be compromised or that would suggest the applicant's safety would be compromised to such an extent that it would be beyond hardship that is commonly suffered by aliens and families upon deportation. Furthermore, the record reflects that the applicant has family members in Pakistan that may be able to assist her financially and emotionally in the absence of her husband, which could ease [REDACTED] concerns for his wife. There is no evidence in the record to show that [REDACTED] from a physical or mental illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Moreover, according to the record, [REDACTED] family members in the United States to support him emotionally in the absence of his wife.

Counsel asserts that the applicant's spouse would face extreme hardship if he relocated to Pakistan in order to remain with the applicant. Counsel contends [REDACTED] would face extreme hardship because he would be unable to financially support himself and the applicant. Besides [REDACTED] affidavit, the record contains

no evidence that supports this contention. The record reflects that [REDACTED] not become a legal permanent resident of the United States until 1991, at the age of 31. [REDACTED] a native of Pakistan who resided there until he became a lawful permanent resident of the United States. Counsel contends that the applicant would suffer extreme hardship if he had to give up the business he has built in the United States. The record reflects [REDACTED] owns and operates a Chicago city taxicab, in which he has invested a large sum of money and which he would have to sell if he were to return to Pakistan with the applicant. However, the money obtained from the sale of the applicant's business could help to [REDACTED] the applicant's transition back to Pakistan. Counsel argues that the applicant will not be able to meet financial obligations set by the court for support of his two U.S. citizen children and that the children's mother would be unable to financially support them without his assistance if he were to return to Pakistan with the applicant. There is no evidence in the record to suggest [REDACTED] would be unable to financially support himself, the applicant and his children. There is no evidence in the record to suggest [REDACTED] has paid any child support past the year 2001. Counsel argues that, [REDACTED] to Pakistan with the applicant, he would be unable to see his two U.S. citizen children. However, [REDACTED] affidavit, there is no evidence in the record to suggest that [REDACTED] the opportunity to visit frequently with his children. Finally, counsel contends [REDACTED] would face hardship if he returned to Pakistan with the applicant because Pakistan is not welcoming to Americans and the State Department has issued a warning that U.S. citizens should depart Pakistan for safety reasons. In support of this contention counsel submitted a copy of a State Department Travel Warning for Pakistan. However, the travel warning only indicates that due to the possibility of terrorist attacks targeting Americans "All American citizens in Pakistan are urged to consider their personal security situations and to take those measures they deem appropriate to ensure their well being, including consideration of departure from the country." Finally, 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.

Counsel contends [REDACTED] separation from the applicant is the most important factor in determining extreme hardship and that the financial hardships he would face if he returned to Pakistan, alone, is sufficient proof of extreme hardship. Counsel points to *Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998) and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002) as precedent supporting these contentions. Counsel's interpretation of *Salcido-Salcido v. INS* is liberal at best. The 9<sup>th</sup> Circuit chose to remand the case for further proceedings and did not make a determination as to whether the separation of the family members in the case constituted extreme hardship. Additionally, in *Salcido-Salcido v. INS*, the separation to which the court was referring was separation of children and their mother, a family relationship, which, in the instant case, has not been established as existing and is not permissible in determining whether extreme hardship exists. Moreover, the applicant does not reside in the 9<sup>th</sup> Circuit and a decision out of this circuit of appeals is not binding in the instant case. *Matter of Recinas* is not applicable to the instant case. In *Matter of Recinas* the applicant was the sole financial support for six U.S. citizen children who had no other means to support themselves. In the instant case, there is no evidence [REDACTED] would be unable to support himself if he were to remain in the United States or return to Pakistan with the applicant. Certainly, the instant case does not purport that Mr. [REDACTED] be unable to earn any income if he were to return to Pakistan.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates [REDACTED] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the

United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. 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 AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.