U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: AUG 1 6 2007

IN RE: SHELINA NOORULLAH

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a naturalized U.S. citizen and the mother of one U.S. citizen child, and she now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her spouse and child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated August 18, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relatives necessary for a waiver under 212(h) of the Act. *Form I-290B.*

In support of these assertions, counsel submits a statement. The record also includes, but is not limited to, a statement from the applicant's spouse; child care receipts; tax statements; a mortgage statement; articles of incorporation for the applicant's business; medical records for the applicant's spouse; criminal records for the applicant; a business license; and an apartment lease. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On June 28, 2001 the applicant was convicted of a Class A Misdemeanor of Credit Card Abuse. *Judgment, Judicial District, Court 204th, Dallas County, Texas.* The applicant received a sentence of 364 days confinement in the Dallas Country Jail which was suspended and the applicant was placed on community supervision for 364 days. *Trial Docket, Criminal District Court, Dallas County, Texas.* The AAO finds that the applicant has been convicted of a crime involving moral turpitude, as credit card abuse under section 32.31 of the Texas Penal Code involves an intent element. *See Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) finding that where knowing or intentional conduct is an element of an offense, moral turpitude is found to be present.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of 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.

Extreme hardship to the applicant's spouse or child must be established in the event that they reside in Pakistan or the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's naturalized U.S. citizen spouse travels with the applicant to Pakistan, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Pakistan. *See U.S. passport of the applicant's spouse.* His father is deceased and his mother lives in the United States. *Form G-325A for the applicant's spouse.* In May 2004, the applicant's spouse underwent triple bypass heart surgery. *See medical records.* The applicant's spouse also suffered from bleeding hemorrhoids and was again admitted to the hospital in July 2004. *Id.* The applicant's spouse has not been able to work full-time since his surgery. *Statement from the applicant's spouse, dated April 14, 2005.* He can only perform limited activities, and has various restrictions, such as the lifting of certain items. *Attorney's statement; medical records.* Furthermore, he continues to regularly visit a pain clinic. *Statement from the applicant's spouse, dated April 14, 2005.* The applicant works full-time running a jewelry business so that she can provide for the family's expenses, including child care tuition for their son, mortgage and health expenses for her spouse. *See attorney's statement; receipts for child care; and mortgage statement; See Also Articles of Incorporation for business,* dated September 18, 2001. The immediate family of the applicant's spouse resides in the United States and the applicant's spouse suffers from a significant health condition. The applicant's spouse's compromised health and need for treatment when combined with the normal disruption of relocation would

constitute extreme hardship. When looking at the totality of circumstances surrounding the applicant's spouse, the AAO finds that he would suffer extreme hardship if he resided in Pakistan with the applicant.

If the applicant's naturalized U.S. citizen spouse resides in the United States, the applicant needs to establish that he will suffer extreme hardship. As previously noted, the applicant underwent triple bypass heart surgery in May 2004 and his ability to work has suffered since that time. *See medical records; statement from the applicant's spouse*. Due to the applicant's inability to work full-time, he and his U.S. citizen child would suffer without the applicant's income, as she provides for the family's expenses. Additionally, the applicant's spouse is not capable of taking care of their son due to his health. *Statement from the applicant's spouse*. The normal hardships of separation would, when experienced with someone with a heart condition, constitute extreme hardship. As such, the AAO finds that that the applicant's spouse would suffer extreme hardship if he remained in the United States while the applicant departed the country.

As the applicant has demonstrated that her U.S. citizen spouse would suffer extreme hardship upon her removal, there is no need to analyze the other qualifying relative.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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).

The adverse factors in the present case are the applicant's criminal offense for which she now seeks a waiver and periods of unauthorized presence.

The favorable and mitigating factors are the extreme hardship to her spouse if she were refused admission, her long-term and supportive relationship with her spouse and U.S. citizen child, her employment record, and her payment of taxes as evidenced by her tax statements. The applicant's most recent criminal conviction took place in 2001, and while this cannot be overlooked, the applicant has no other criminal offenses since that time.

The AAO finds that, although the crime and immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.