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FILE:

Office: CHICAGO, IL Date:

JAN 29 2007

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)

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, Chief  
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 Immigration and Nationality Act (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 and the son of a naturalized U.S. citizen. He 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.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 29, 2005.

The record reflects that, on July 8, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. On August 20, 1998, the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago, Illinois District Office. The applicant testified that, in 1991, he procured admission to the United States by presenting a passport under the name "[REDACTED]".

On March 7, 2005, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the applicant's spouse and mother would suffer extreme hardship if the applicant were removed from the United States. *See Applicant's Brief*, dated July 12, 2005. In support of his contentions, counsel submitted the referenced brief, medical letters and documentation, a copy of the applicant's mother's naturalization certificate, a list of hours worked by the applicant's spouse, and a copy of a Medical Certification for Disability Exceptions (Form N-648) for the applicant's mother. The entire record was reviewed in rendering a decision in this case.

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 district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admission to obtaining entry into the United States by fraud in 1991. On appeal, counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien himself 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, 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. *Id.* 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 record reflects that, on March 29, 1997, the applicant married his spouse, [REDACTED] (Ms. [REDACTED]). Ms. [REDACTED] is a U.S. citizen by birth. The applicant and Ms. [REDACTED] have no children. The applicant's mother, [REDACTED] is a native of Pakistan who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 2005. The record reflects further that the applicant is in his 30's, Ms. [REDACTED] is in her 40's, the applicant's mother is in her 70's, and Ms. [REDACTED] and the applicant's mother may have some health concerns.

Counsel contends that the applicant's mother will suffer extreme hardship if she were to remain in the United States without the applicant because she suffers from early Alzheimer type dementia and multiple mini-strokes. The Form N-648 Medical Certification for Disability Exception indicates that the applicant's mother is exhibiting signs and symptoms of early Alzheimer type dementia and multiple mini-strokes, which affects her ability to retain recent information. It also indicates that the applicant's mother is still capable of performing simple daily activities and her ongoing medical treatment will slow her deterioration. The applicant and Ms. [REDACTED] affidavits do not address whether the applicant's mother would suffer extreme hardship if she were to remain in the United States without the applicant and there are no affidavits from any other family members. The record does not contain any evidence that establishes that the applicant's mother is financially or physically dependent upon the applicant. The record indicates that the applicant's mother resides in Texas and that five of the applicant's adult siblings also reside in Texas. Accordingly, the applicant's mother has other family members in the United States, such as her other adult children, who may be able to assist her financially and physically in the absence of the applicant. There is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to the applicant's mother if she had to support herself without income from the applicant, even when combined with the emotional hardship described below.

As discussed above, while the Form N-648 indicates that the applicant's mother's short-term memory is diminished with the onset of an early Alzheimer type dementia, there is no evidence in the record to indicate that her condition would cause her to suffer hardship beyond that commonly suffered by aliens and families upon removal. The record reflects that the applicant's mother has family members in the United States, such as her other adult children, who may be able to assist her physically and emotionally in the absence of the applicant.

Counsel also asserts that Ms. [REDACTED] will suffer extreme hardship if she were to remain in the United States without the applicant because she is unable to work full time due to her medical conditions. Ms. [REDACTED] in her affidavit, states that, in 1996, she underwent back surgery from which she has never fully recovered and still suffers severe back pains. Ms. [REDACTED] states that this pain prevents her from keeping a full-time job and that she depends on the applicant both emotionally and financially. The applicant, in his affidavit, states that Ms. [REDACTED] suffers from severe back pain and is unable to provide for herself due to this disability. The applicant states that Ms. [REDACTED] needs him to provide mental and financial support because she is unable to hold a full-time job. A letter from Ms. [REDACTED] physician indicates that she suffers from chronic low back pain and has been given an exercise sheet and advised in a regular exercise program for her back condition. Emergency room records indicate that Ms. [REDACTED] was treated for migraine headaches and blurry vision in May and June of 2005. The emergency room records indicate that Ms. [REDACTED] CT scan was normal and that she was advised to see an optometrist for glasses and to take prescribed migraine medication.

Financial records indicate that, in 1997, Ms. [REDACTED] earned approximately \$12,309. The record reflects that Ms. [REDACTED] has family members in the United States, such as her parents, who may be able to assist her physically and financially in the absence of the applicant. The record shows that, even without assistance from the applicant or other family members, Ms. [REDACTED] in the past, has earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. An unofficial earnings statement indicates that from February 13, 2005, to May, 27, 2005, Ms.

██████████ worked 13 days. However, the statement also reflects that Ms. Damani worked a total of 284 hours during those 13 days, which would indicate that she worked approximately 20 hours per week. This earning statement does not, as counsel states, establish that Ms. ██████████ is unable to work on a full-time basis as a result of her medical problems. There is no evidence in the record that demonstrates Ms. ██████████ is unable to work full-time due to her medical conditions. Furthermore, financial records indicate that, in 1997, the year immediately following her back surgery, Ms. ██████████ was employed on a full-time basis. While Ms. ██████████ may have to lower her standard of living, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to Ms. ██████████ if she had to support herself without additional income from the applicant, even when combined with the emotional hardship described below.

While the medical documentation diagnoses Ms. ██████████ with chronic back pain and migraine headaches, there is no evidence in the record to indicate that Ms. ██████████ is unable to function on a daily basis without assistance from the applicant. There is no evidence in the record to ██████████ suffers from a physical or mental illness that would cause her to suffer hardship because ██████████ is offered by aliens and families upon removal. Additionally, the record states that Ms. ██████████ has family members in the United States, such as her parents. Although Ms. ██████████ states that her U.S. family does not help her with her health problems, the record does not establish that they would not be able to assist her physically and emotionally in the absence of the applicant.

Counsel, the applicant and Ms. ██████████ do not assert that the applicant's mother would suffer extreme hardship if she accompanied the applicant to Pakistan. The AAO is, therefore, unable to find that the applicant's mother would suffer extreme hardship should she choose to accompany the applicant to Pakistan.

Counsel does not assert that the applicant's spouse would face extreme hardship if she relocated to Pakistan in order to remain with the applicant. Ms. ██████████ in her affidavit, states that she would not be able to accompany the applicant to Pakistan because of the political situation in that country and because she would be unable to receive proper treatment for her medical conditions in Pakistan. The applicant, in his affidavit, also states that Ms. ██████████ would not be able to receive adequate medical attention in Pakistan. There is, however, no evidence in the record to establish that Ms. ██████████ would be unable to receive adequate medical attention in Pakistan. Additionally, Ms. ██████████ did not indicate the particular political problems in Pakistan that would affect her or provide any documentation to support her statement including evidence of the political situation to which she refers. While the hardships faced by Ms. ██████████ with regard to adjusting to a new culture, economy, environment, and separation from friends and family are unfortunate, they are what any spouse accompanying a removed alien to a foreign country would experience normally.

Finally, the AAO notes that, as U.S. citizens, the applicant's spouse and mother are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Ms. ██████████ and the applicant's mother would not experience extreme hardship if they remained in the United States without the applicant.

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 and mother would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Ms. ██████████ and the applicant's mother will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising

whenever a spouse or son 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 his U.S. citizen spouse and mother 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 he 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.