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FILE:

Office: CHICAGO, IL

Date: MAR 26 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 8, 2005.

The record reflects that, on September 30, 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 April 5, 1999, the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago, Illinois District Office. The applicant testified that, in 1988, he entered the United States by presenting a passport and a lawful permanent resident card under the name "[REDACTED]" On May 2, 1999, 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 spouse.

On appeal, counsel contends that the district director failed to consider factors, which established the applicant's spouse would suffer extreme hardship, and failed to balance the applicant's equities. See *Applicant's Brief*, received May 27, 2005. In support of his contentions, counsel submitted the referenced brief, medical documentation, financial documentation, an updated affidavit from the applicant's spouse and letters of recommendation. 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 1988. 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 September 12, 1997, the applicant married his spouse, [REDACTED]. [REDACTED] is a native of the Philippines who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1996. The applicant and [REDACTED] do not have any children. The record indicates that the applicant is in his 30's, [REDACTED] is in her 50's, and [REDACTED] may have some health concerns.

Counsel asserts that the district director failed to factor the extent of [REDACTED] medical condition, angina, into whether she would suffer extreme hardship. Counsel asserts that angina is the first sign of heart disease and that, although [REDACTED] condition is controlled, it can be worsened by increased stress such as that created by the applicant's removal. Counsel asserts the district director failed to appreciate the necessity of the applicant and [REDACTED] joint income. Counsel asserts that [REDACTED] worked extensive overtime in

order to earn \$20,000 in 2004 and that, although the applicant's income is not substantial, it assists in the income of the couple. Counsel asserts that the applicant and [REDACTED] have purchased a home and that denial of the waiver would result in [REDACTED] being solely financially responsible for the mortgage. Counsel asserts that [REDACTED] cannot afford to make the mortgage payments on her \$8.00 per hour salary. Counsel asserts that the hardship [REDACTED] would suffer is more than merely emotional since, given the longevity of their marriage and the closeness between their families, there is an immediate emotional connection which would be severed should the waiver be denied.

[REDACTED], in her affidavits, states she and the applicant have been married since 1997, understand each other's culture, respect each other and have a marriage that has remained strong. She states that she and the applicant love each other very much and do not wish to live apart. She states that she and the applicant recently purchased a home and her base salary of \$8.00 per hour is not sufficient to permit her to make the required monthly mortgage payments of \$1,250. [REDACTED] states that she can be pretty moody and hard to understand but that the applicant seems to know her better than she ever thought anyone could. She states that she can always count on him whenever she needs encouragement or support.

Medical documentation indicates that, in 1996, [REDACTED] was diagnosed with angina, for which she was prescribed medication. Medical documentation indicates that, in May 1999, [REDACTED] reported some chest pain to her doctor, her EKG was abnormal and she was referred to a cardiologist for follow-up. There is no further medical documentation in regard to [REDACTED]'s angina or abnormal EKG. Medical documentation indicates that, in February 2005, a colonoscopy showed no obstruction along [REDACTED]'s colon, but a persistent narrowing without evidence of mucosal destruction, for which a follow up study with an endoscopy could be helpful in excluding any significant lesion involving that particular area. There is no further medical documentation in regard to the outcome of any follow-up in regard to [REDACTED] colon. While the medical documentation indicates that [REDACTED] has some medical problems for which she is prescribed medication, the documentation does not provide information in regard to the effect of these conditions on [REDACTED] ability to perform her work duties or daily activities, whether she requires long-term medical care or what the prognosis is for her conditions. The medical evidence does not indicate that [REDACTED]'s illnesses are related to the applicant's immigration situation or that her treatment requires the presence of the applicant or that she would be unable to receive appropriate medical treatment in the absence of the applicant.

Financial records report that, in 2004, [REDACTED] earned approximately \$20,605. The record reflects that, if [REDACTED] did not work overtime, she would earn approximately \$16,640. While the medical documentation indicates that [REDACTED] has some health concerns, it does not, as previously noted, establish that she is unable to perform her work duties or daily activities due to her medical conditions or that the applicant's absence would result in [REDACTED]'s inability to function on a daily basis. The record shows that, even without assistance from the applicant, [REDACTED] in the past or with her base salary alone, earns sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While [REDACTED] may have to lower her standard of living and may be unable to retain the house she and the applicant recently purchased, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support herself without additional income from the applicant, even when combined with the emotional hardship described below.

As discussed above, there is no evidence in the record to confirm that [REDACTED] suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly experienced by aliens and families upon removal. While the AAO acknowledges that [REDACTED] would be affected emotionally by the separation from her husband of ten years, the applicant has provided no evidence that [REDACTED] hardship would be greater than that commonly suffered by aliens and families upon removal.

Counsel asserts that [REDACTED] would suffer extreme hardship if she accompanied the applicant to Pakistan because she was born in the Philippines, has lived in the United States for many years, has never visited Pakistan and does not speak the language. Counsel asserts [REDACTED] is a liberal, Catholic, U.S. citizen of Filipino heritage whose relocation to Pakistan would result in hardship because she would have to hide her religion. Counsel asserts that [REDACTED] would be forced to live in a crowded family home with her husband's family in Pakistan. Counsel asserts that [REDACTED]s salary would be reduced from what she earns in the United States due to the poor economy in Pakistan. Counsel asserts that [REDACTED]s medical condition could be worsened by relocation to Pakistan, a country with limited medical resources. [REDACTED] in her affidavit, states that, as a modern Filipina-American citizen and a devoted Catholic, it would be very difficult for her to adjust to life in Pakistan. She states it would be very difficult for her to adjust to the cultural differences and that the freedoms that she has been accustomed to all of her life would be eliminated or severely reduced as a result of relocation to Pakistan. She states that she would have to leave all of her close friends and relatives in the United States and be forced to live with her husband's family due to economic constraints. She states that her husband is the only person in his family who speaks and understands English.

Having analyzed the hardships [REDACTED] and counsel claim she would suffer if she were to accompany the applicant to Pakistan, the AAO finds that they do not constitute extreme hardship. Counsel asserts that Ms. [REDACTED] would not be able to find employment in Pakistan that was comparable to her employment in the United States. However, there is no evidence in the record to establish that [REDACTED] and the applicant would be unable to find *any* employment in Pakistan. Economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir.1986)*. The record also fails to demonstrate that [REDACTED] would be unable to receive appropriate care for her medical conditions in Pakistan or that her relocation to Pakistan would adversely affect her medical conditions. While counsel asserts that [REDACTED] does not speak the language of Pakistan, country condition reports indicate that Urdu and English are both the official languages of Pakistan. *Department of State Country Background Notes, Pakistan, www.state.gov/r/pa/ei/bgn/3453.htm*. Counsel and [REDACTED] assert that [REDACTED] would have to hide her religion and her freedoms would be reduced in Pakistan. However, there is no evidence in the record to establish that [REDACTED] would be unable to practice her religion or suffer any other loss of freedom. While the hardships that would be faced by [REDACTED] with regard to relocating to Pakistan--adjusting to the culture, economy and environment; separation from friends and family; a potentially reduced quality of health care; and having to reside with family members as a result of economic constraints--are unfortunate, they are what could be expected by any spouse accompanying a removed alien to a foreign country. Additionally, 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 and, as discussed above, Ms. [REDACTED] would not experience extreme hardship if she 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 would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face the unfortunate, but expected disruptions, inconveniences, and difficulties that arise 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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 has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). The AAO notes that counsel's assertions in regard to the district director's failure to weigh the applicant's equities against his fraud relate to whether the applicant merits a waiver as a matter of discretion. Having found the applicant statutorily ineligible for relief because he has not established a qualifying family member would suffer extreme hardship, 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 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.