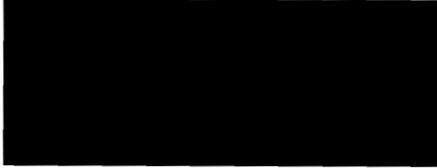




U.S. Citizenship
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FILE:



Office: CHICAGO, ILLINOIS

Date: DEC 24 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway
for

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for submitting a fraudulent divorce decree in order to obtain an immigration benefit. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated November 17, 2005.

On appeal, the applicant's counsel claims that the applicant's "United States Citizen spouse will suffer extreme hardship if she is not allowed to remain in the U.S." *Form I-290B*, filed December 20, 2005.

The record includes, but is not limited to, counsel's brief, letters from the applicant and her husband, medical documents pertaining to the applicant's husband's medical condition, the fraudulent divorce decree, the applicant's marriage license, and an approved relative immigrant visa petition. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's husband.

In the present application, the record indicates that the applicant married her husband on March 23, 1984 in Pakistan. On November 14, 1984, the applicant and her husband divorced.¹ On April 29, 1985, the applicant entered the United States on a B-2 nonimmigrant visa, with authorization to remain in the United States until October 28, 1985. The applicant failed to depart when her authorization expired. On October 9, 1992, the applicant remarried her husband, who had become a naturalized United States citizen, in Illinois. On October 29, 1992, the applicant's husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application for Permanent Residence (Form I-485). On February 8, 1994, the applicant's Form I-485 was denied. On August 28, 2000, the applicant's husband filed another Form I-130. On the same day, the applicant filed another Form I-485. On March 22, 2005, the applicant's Forms I-130 were approved. On June 6, 2005, the applicant filed a Form I-601. On November 17, 2005, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's

¹ The AAO notes that the submitted divorce decree was determined to be fraudulent by the Service, and the applicant has not challenged this finding on appeal.

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.

Counsel claims that the applicant's husband will suffer extreme hardship if the applicant is removed from the United States. *Form I-290B, supra*. Counsel states the applicant's husband is "currently undergoing extensive medical treatment for diabetes and high blood pressure." *Id.* The applicant's husband states "[d]ue to high blood pressure and diabetes [he] need[s] [the applicant's] help daily to stabilize [his] health." *Affidavit from [REDACTED]* dated June 3, 2005. The AAO notes that the record contains various medical reports and documents establishing that the applicant's husband is suffering from diabetes and high blood pressure; however, there is no evidence in the record establishing that the applicant's husband could not receive treatment for his medical conditions in Pakistan or that he has to remain in the United States to receive medical treatments. The applicant states her children need her in the United States. *Affidavit from the applicant*, dated June 3, 2005. The AAO notes that the applicant's two oldest children are adults and it has not been established that they need the applicant to help care for them. Additionally, it has not been established that the applicant's minor child, who is 9 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Pakistan. The AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Pakistan. Additionally, the applicant's husband is a native of Pakistan, who speaks the native language, and it has not been established that he has no family ties in Pakistan. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanies her to Pakistan.

In addition, the applicant does not establish extreme hardship to her husband if he remains in the United States, in close proximity to his family, maintaining his business, and with access to good medical care. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states the applicant "has the primary role of maintaining her household by cooking and cleaning, taking care of her three children and taking care of her elderly father and mother in law. She plays a key role as caregiver, allowing her husband to focus on financially supporting the family." *Appeal Brief*, filed December 20, 2005. The AAO recognizes that the applicant's husband will experience some hardship as a single parent, but it has not been established that the applicant's spouse will be unable to provide or obtain adequate care for his children in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Additionally, the applicant's two oldest children are adults and it has not been established that they cannot help care for their younger sibling and grandparents. The applicant states she will be all alone in Pakistan because her siblings reside in the United States. *Affidavit from the applicant, supra*. The AAO notes that hardship the applicant herself experiences upon removal is irrelevant to section 212(i) waiver proceedings. Counsel states that the applicant's husband will be unable "to support the family without having [the applicant] here to support the home." *Appeal Brief, supra*. The AAO notes that the record fails to demonstrate that the applicant cannot obtain employment in Pakistan, or that she

will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 AAO recognizes that the applicant's United States citizen husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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 application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) 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.