



U.S. Citizenship
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FILE:

Office: CHICAGO DISTRICT OFFICE

Date: MAR 03 2008

IN RE:

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

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

The applicant, a native and citizen of Pakistan, was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The record indicates that the applicant has a U.S. citizen spouse and three U.S. citizen children. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his family in the United States.

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act on the applicant's conviction for possession of less than 30 grams of marijuana, a controlled substance as defined in 21 U.S.C. 802, on July 17, 2001. The district director also found that the applicant 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 June 20, 2005.

On appeal, the applicant asserts that his spouse and children would suffer extreme hardship as a result of his inadmissibility. *Applicant's Letter*, dated July 18, 2005.

The record indicates that the applicant was convicted of possession of less than 30 grams of marijuana on July 17, 2001.

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

- (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (I) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) *and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana* (emphasis added.)

The record indicates that the applicant was convicted of an offense that was committed in 2001. As his current application for adjustment of status has been filed less than 15 years after the activities for which the applicant is inadmissible, he is statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

A section 212(h)(1)(B) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a "qualifying relative," *i.e.*, the U.S. citizen or lawfully resident spouse, parent or son or daughter of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it is shown that hardship to the applicant will result in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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.

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).

Moreover, of particular relevance to cases in which children are qualifying relatives,

Although we do not go so far as to hold that the separation of a father from his child is, as a matter of law, extreme hardship for purposes of [suspension of deportation], we do hold that where a father expresses deep affection for his child and where the record demonstrates that his actions are consistent with and supportive of his expression of affection, a finding of no extreme hardship will not be affirmed . . . unless the reasons for such a finding are made clear.

Bastidas v. INS, 609 F.2d 101, 105 (3rd Cir. 1979). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and resides in Pakistan or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his wife or children in the event that they relocate with him to Pakistan. The applicant states that his wife was born in the United States and is a devout Christian. *Applicant's Statement*, dated July 18, 2005. The applicant's spouse also states that her family is from Mexico and she is a devout Catholic. *Spouse's Statement*, dated July 18, 2005. The applicant asserts that his spouse would face discrimination as a woman and a Christian in Pakistan, a country that is 97 percent Muslim and follows shari'a law. *Applicant's Statement*, dated July 18, 2005. He states that she cannot relocate to Pakistan where her freedom, liberty and life would be jeopardized. In addition, the applicant states that in Pakistan the average salary for a person with his qualifications is approximately \$200 to \$300 per month and that the unemployment rate in Pakistan is very high. He fears that in Pakistan he would not be able support his two children in the United States, for whom he provides support and health care. *Id.* In support of these assertions the applicant submits a country conditions report for Pakistan and various articles concerning violence committed against Christians in Pakistan. The AAO notes that the articles are dated from 2002 to 2004 and include stories regarding the torture, execution, and murder of Christians in Pakistan. The AAO finds that because of the country conditions in Pakistan and the treatment of Christians, it would be an extreme hardship for the applicant's Christian spouse to relocate to Pakistan.

The applicant states further that his inadmissibility would cause deep emotional pain and distress for his spouse, who is pregnant with their first child. *Applicant's Statement*, dated July 18, 2005. He also states that his two young children from his prior marriage would suffer immensely from being separated from their father. He states that his current employment helps him support his children by paying for their health insurance, schooling and living expenses. *Id.* The applicant's spouse states that the applicant is a wonderful father and that his children would be devastated if their father were removed to Pakistan. *Spouse's Statement*, dated July 18, 2005. The record includes documentation establishing that the applicant's children's health care is provided through his employer and that he sends child support checks to his former spouse. However, the record does not demonstrate that in the applicant's absence the children's mother would not be able to support them and provide them with healthcare. The record contains no current documentation as to the financial status of the children's mother nor does it establish the impact of the applicant's removal on his two older children. The claims made by the applicant and his spouse concerning the devastating impact of the applicant's removal on his children are insufficient to establish extreme hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO also notes that the record does not detail and/or explain the applicant's spouse's distress if separated from the applicant. The applicant has not submitted any documentation to establish his and his spouse's living situation or his spouse's emotional state. The record does include a letter from the applicant's spouse's employer showing that she works fulltime and earns \$13.78 per hour, approximately \$28,000 per year. *Letter from Spouse's Employer*, dated March 24, 2005. Thus, the AAO finds that the current record

does not establish that the applicant's spouse and/or children would suffer extreme hardship as a result of being separated from the applicant.

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.