

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

7/2

[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date MAR 25 2008

IN RE:

[REDACTED]

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:

[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 Director, California Service Center and 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 under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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 and their two United States citizen children.

The 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 Director*, dated January 25, 2006.

On appeal, counsel asserts that the Director erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*, dated March 26, 2006.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, an affidavit from the applicant; affidavits from the applicant's spouse, affidavits from the applicant's family members and friends; a statement from the applicant's son; a statement from the primary care physician for the applicant's spouse; statements from the pediatrician for the applicant's children; a school report card for the applicant's son; a statement from the principal of the applicant's son's elementary school; a statement from the center director of the applicant's son's child care and preschool center; published country conditions reports; photographs; a health insurance plan for the applicant; a life insurance plan for the applicant; tax statements for the applicant and his spouse; W-2 forms for the applicant and his spouse; a Massachusetts court summary for the applicant; bank statements for the applicant and his spouse; earnings statements for the applicant's spouse; and a letter of employment for the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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

- (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.

Section 212(i) of the Act provides that:

- (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 record reflects that on February 23, 1994 the applicant attempted to gain admission to the United States using a photo-switched British passport. *Record of Sworn Statement; Form I-601, Application for Waiver of Excludability*. The applicant was denied admission to the United States. *Immigration and Naturalization Service Memorandum*, dated February 23, 1994. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship to be considered in the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse if the applicant is removed. Hardship to the applicant's children is only considered as it would affect the applicant's spouse. If 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a 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.

The AAO notes that extreme hardship to the applicant's qualifying relative must be established in the event that she resides in Pakistan or the United States, as she is 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 spouse travels with the applicant to Pakistan, the applicant needs to establish that his spouse would suffer extreme hardship. The applicant's spouse was born in Pakistan. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. In April 2001, both of the parents of the applicant's spouse lived in Pakistan. *Id.* As of July 2001, the mother of the applicant's spouse lived in the United States. *Affidavit from the applicant's spouse*, dated July 12, 2001. The record does not address what additional family members, if any, the applicant's spouse may have in Pakistan. The applicant's spouse states that she completed her college studies in the United States and that if she moved to Pakistan, she would lose everything that she has worked so hard to accomplish. *Id.* The record includes a country conditions report from the United States Department of State which addresses issues regarding workers rights in Pakistan. *Pakistan, Country Reports on Human Rights Practices – 2005, United States Department of State*, dated

March 8, 2006. While the report states that the national minimum wage for unskilled workers is \$42 (PKR 2,500) per month and does not provide a decent standard of living for a worker and family, the report does not address employment opportunities or wage information regarding individuals with higher education. *Id.* The AAO also notes that the applicant spent eight years working for a construction company in Pakistan. *Form G-325A, Biographic Information sheet, for the applicant.* There is nothing in the record to demonstrate that the applicant and his spouse would be unable to contribute to their family's financial well-being from Pakistan. The applicant's spouse notes that Pakistan has a very repressive social and political culture with regard to women. *Statement from the applicant's spouse, dated July 12, 2001.* She does not, however, state the specific hardships she believes she would suffer as a result of this culture. While country condition reports note the prevalence of domestic violence, rape, sexual harassment, and honor killings in Pakistan (*See Pakistan, Country Reports on Human Rights Practices – 2005, United States Department of State, dated March 8, 2006*), the AAO notes that the record offers no evidence that establishes that the applicant's spouse would reside in circumstances that would subject her to domestic or other types of violence. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Pakistan.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse would suffer extreme hardship. The mother of the applicant's spouse lives in the United States. *Affidavit from the applicant's spouse, dated July 12, 2001.* According to the applicant's spouse, in order for her to work full-time, it is necessary that the applicant is physically present in their home to help take care of their two children. *Affidavit from the applicant's spouse, dated March 20, 2006.* The applicant is involved with every aspect of their children's lives, picking them up from the school bus stop, taking them to playgroup activities, and supporting them in extracurricular sports. *Id.* The applicant's spouse does not believe that she could economically or physically support and provide for their children without the daily presence of the applicant. *Id.* While the AAO acknowledges the statements of the applicant's spouse, it notes that the record fails to mention whether there are any other family members who could assist with these caretaking responsibilities. Furthermore, as previously noted, the record does not demonstrate that the applicant would be unable to assist in contributing to the financial well-being of his family from a place other than the United States.

The AAO notes that the applicant's eleven year old son has fractured his ankle twice. *Affidavit from the applicant's son, undated.* Throughout these incidents, the applicant offered his son a tremendous amount of emotional and physical support. *Id.* As his son states, "[I]f my dad was forced to leave and go someplace else I would be mad at everyone. I need my father. My life without him would be like being in jail because I could not do everything I'm used to doing." *Id.* While the AAO notes that the applicant's son is not a qualifying relative for purposes of this case, it has reviewed the record for evidence that the hardship suffered by the applicant's children as a result of his removal would, in turn, create hardship for the applicant's spouse, the qualifying relative. Significant health conditions are factors to be considered in the extreme hardship analysis. *Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999).* However, the record does not indicate that either of the applicant's children currently has any on-going health issues that would impact the applicant's spouse. According to the primary care physician for the applicant's spouse, removing the applicant from the lives of his spouse and children could result in extreme emotional trauma and depression to the applicant's spouse and possibly interfere with her ability to care for her children and continue to lead a productive life. *Statement from [REDACTED], Primary Care Physician, Physician Associates at Mount Auburn, dated March 17, 2006.* Although the input of any health professional is respected and valuable, the

AAO notes that the primary care physician is not a mental health professional and the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or children or any history of psychological treatment for the applicant's spouse or children. Moreover, the conclusions of the primary care physician are speculative, as she comments on possible psychological health conditions that may occur in the future. *Id.* For this reason as well, her evaluation is of diminished value to a finding of extreme hardship. While the record supports that the applicant's son would be significantly affected by being separated from his father as evidenced by his affidavit, the record does not include any documentation from a licensed mental health professional that indicates how his reaction to his father's removal would effect the applicant's spouse, the qualifying relative in this case.

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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish her situation, if she he remains in the United States, from that of other individuals separated as a result of removal. It, therefore, does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in 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(a)(6)(C) 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.