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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: SAN FRANCISCO, CA Date: DEC 14 2005

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, CA. The matter 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant's spouse is a U.S. citizen and the applicant is seeking a waiver of inadmissibility in order to reside in the United States.

The district director found that based on the evidence in the record, the applicant failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated April 13, 2004.

On appeal, counsel for the applicant asserts that the district director failed to analyze each of the hardship factors, apply current case law and weigh the applicant's equities with the adverse factor. *Form I-290B*, dated May 14, 2004.

In support of these assertions, counsel submits a brief, letters from the applicant and her spouse, an employment letter for the applicant's spouse, a grant deed and furniture invoice for the applicant's spouse's home, photos of the applicant's family, physician letters, numerous support letters and information on Pakistani country conditions. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States with a B-2 visitor visa on February 3, 2001. Her authorized period of stay expired on August 2, 2001 and she untimely filed for an extension of her visitor status which was denied on January 30, 2002. She filed an application to adjust status on March 25, 2003 based on marriage to her U.S. citizen husband. Subsequently, the applicant departed the United States using an advance parole document on March 26, 2003 and returned to the United States on July 21, 2003. Therefore, the applicant accrued unlawful presence from August 3, 2001, the date after her authorized period of stay expired, until March 25, 2003, the date she filed the I-485 application. The 10-year bar was triggered by the applicant's departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include, but are not limited to, the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to Pakistan or in the event that he remains in the United States, as he 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 her spouse in the event that he relocates to Pakistan. Counsel states that the applicant's spouse's sister and brother-in-law live in the United States and his brothers live in England and Pakistan. *Brief in Support of Appeal*, at 11, dated May 14, 2004. Counsel states that the applicant's spouse is currently employed with a salary of \$76,500 per year and that Pakistan's per capita annual income is \$475. *Id.* However, there is no indication as to what type of income the applicant's spouse would be able to obtain in Pakistan. Counsel states that the applicant's spouse has been diagnosed with severe migraine headaches and there is no treatment for this disease in Pakistan. *Id.* The record includes a letter from the applicant's spouse's doctor which states that he takes injections and nasal spray for his headaches and that there is no appropriate treatment in Pakistan. *Letter from Dr. Jeffrey Riopelle*, dated May 11, 2004. This letter, however, does not provide any detail on the length of the

doctor-patient relationship, the clinical history of the headaches and the frequency of the treatment. Furthermore, there is no persuasive information provided for the basis of the statement regarding the inability of the applicant's spouse to use nasal spray and receive injections in Pakistan for his migraine headaches.

Counsel cites the U.S. Department of State Country Reports on Human Rights Practices for Pakistan which details human rights violations and mistreatment of women. *Brief in Support of Appeal*, at 11. However, the record indicates that the applicant's spouse was born and raised in Pakistan and there is no evidence that he was subject to any human rights violations. Counsel asserts that the applicant's spouse cannot relocate to Pakistan as it would take ten years or more for him to obtain legal status through the applicant's sponsorship. *See id.* at 12. The AAO notes that without documentary evidence to support this claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Lastly, counsel states that the applicant's spouse will experience culture shock as he has not lived in Pakistan in 20 years and he would have to sell his home if he relocated. Although unfortunate, these are normal results of relocating to a foreign country.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Currently, the applicant manages the household and cares for the children. *Brief in Support of Appeal*, at 5. Counsel asserts that the applicant's spouse will have to care for the children without the applicant and he may have to hire someone to care for the children when he is at work. *Id.* at 13. This is a common result of separation and there is no indication that the applicant's spouse cannot afford the stated assistance. Counsel mentions hardship to the applicant's children, however, they are not qualifying relatives in these proceedings and their hardship is only relevant to the extent that it causes hardship to the applicant's spouse. This type of hardship is not supported in the record.

After a thorough review of the record, the AAO finds that extreme hardship has not established in the event that the applicant's spouse relocates to Pakistan or in the event that he remains in the United States.

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, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion 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 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.