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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H3

[REDACTED]

FILE:

[REDACTED]

Office: ISLAMABAD, PAKISTAN

Date: JAN 29 2007

IN RE:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

PUBLIC COPY

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 Acting Officer in Charge, American Embassy, Islamabad, Pakistan. 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)(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 record indicates that the applicant is married to a naturalized citizen of the United States and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her husband and three United States citizen children.

The Acting Officer in Charge found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated May 6, 2004.

On appeal, the applicant, through counsel, asserts that the decision denying the applicant's Form I-601 was erroneous. *Form I-290B*, filed March 1, 2006.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant's spouse and two naturalized United States citizen children, numerous newspaper articles, and medical reports on the applicant's husband and United States citizen daughter. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

In the present application, the record indicates that the applicant and Mr. [REDACTED] were married on February 18, 1985, in Karachi, Pakistan. The applicant entered the United States on a B1/B2 nonimmigrant visa in 1994. Mr. [REDACTED] became a naturalized United States citizen on February 21, 1997. The applicant departed the United States in May 2001. On July 14, 2001, the applicant's Form I-130 was approved. On November 19, 2003, the applicant filed a Form I-601. On May 6, 2004, the Acting Officer in Charge denied the applicant's Form I-601, finding that the applicant accrued more than four years of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse. The applicant is attempting to seek admission into the United States within 10 years of her May 2001 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon deportation is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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 (BIA) 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 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 asserts that the applicant's spouse would face extreme hardship if he relocated to Pakistan in order to remain with the applicant. The applicant's husband claims he cannot join his wife "in Pakistan because of [his] extensive business interests in the United States." *See Statement by Mr. [REDACTED]* filed July 22, 2004. The applicant's husband states he is providing "for two households and the economic pressure is great." *Id.* The applicant's husband is being treated for "acute anxiety with depression and suicidal ideation." *See Statement by [REDACTED]* D.O., dated November 14, 2003. Dr. [REDACTED] states the applicant's husband's condition "is principally due to the alienation of his wife and children [and]...[i]t certainly would be helpful if not curative to be reunited with his family here in the United States." *Id.* The AAO notes Dr. [REDACTED] is an Osteopathic Physician, who has not demonstrated he is qualified to make psychological determinations. Additionally, there are no professional psychological evaluations for the AAO to review to determine what personal issues are affecting the applicant's spouse's emotional and psychological wellbeing. Counsel contends that the applicant's United States citizen daughter, who currently resides in Pakistan with the applicant, has suffered extreme hardship. *See Brief in Support of Appeal*, filed July 22, 2004. Counsel

claims because of the applicant's daughter's young age, she "has had to remain in Pakistan" with her mother. *Id.* The applicant's husband states "[t]he younger United States citizen child is forced to live with her mother in Pakistan." See *Statement by Mr. [REDACTED]* filed July 22, 2004. He claims he has "repeatedly searched for an appropriate Moslem care giver for [his] child in the United States can not [sic] find one." *Id.* Counsel claims the applicant's daughter, who resides in Pakistan, is isolated because of her "striking cultural differences...and American accent." See *Brief in Support of Appeal*, filed July 22, 2004. Counsel cites the poor economic conditions and general instability in Pakistan as further reasons that the applicant's husband and family cannot return there. *Id.*

Counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States, maintaining his business, access to adequate health care, and education for his children. As a United States 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. Counsel states that the applicant's spouse "has significant business interests" in the United States and he provides for the applicant in Pakistan. The AAO notes that the applicant's spouse has been maintaining his business interests without the applicant's assistance since May 2001, the month the applicant departed the United States. No documentation was submitted to indicate that the applicant's spouse has experienced financial hardship as a result of the separation from the applicant, and there is no evidence that the applicant has ever contributed financially to her husband. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Further, beyond generalized assertions regarding country conditions in Pakistan, the record fails to demonstrate that the applicant 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).

The AAO notes that counsel's main argument is that the applicant's youngest United States citizen daughter, who is residing in Pakistan with her mother, is suffering from extreme hardship. However, the applicant's daughter is a United States citizen who can return to the United States at any time. Counsel and the applicant's husband state the applicant's daughter "is forced" to reside in Pakistan with the applicant because of her young age. The AAO notes that the applicant's daughter will be turning ten years old in May and the applicant's other two children, who are seventeen and eighteen years old, could provide childcare help. Additionally, the applicant's United States citizen daughter is not a qualifying relative for a waiver under section 212(a)(9)(B) of the Act.

Although the AAO is not insensitive to the applicant's situation, the financial strain of visiting the applicant in Pakistan and the emotional hardship of separation, including the applicant's husband's psychological and emotional decline, are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure, and has endured, 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.

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 BIA 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.

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.