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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: ATHENS, GREECE

Date: JUN 26 2008

RELATES)

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]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Athens, Greece denied the waiver application. 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 ten years of his last departure from the United States. The applicant is the son of a lawful permanent resident. He 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 his mother.

The officer in charge concluded that the applicant had 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 Officer in Charge*, dated February 20, 2007.

The record reflects that, in September 1983, the applicant was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past his authorized stay. In 1996, the applicant departed the United States and traveled to Canada in order to obtain status as a Canadian Landed Immigrant. The applicant reentered the United States by presenting his Canadian immigrant documents and remained in the United States past his authorized stay. On January 17, 2003, the applicant departed the United States and traveled to the United Arab Emirates (UAE) to visit his father. On February 7, 2003, the applicant was refused admission to the United States at pre-boarding inspections at the Toronto International Airport as an immigrant without valid documentation to enter the United States. On February 11, 2003, the applicant appeared at the Detroit, Michigan Port of Entry. The applicant was refused admission to the United States under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant without valid documentation to enter the United States, after he admitted that he was returning to the United States to resume his residence and had previously worked in the United States. On the same day the applicant was removed from the United States and returned to Canada.

On November 22, 2005, the applicant's mother, [REDACTED], became a lawful permanent resident through a Petition for Alien Relative (Form I-130) filed on her behalf by her brother, [REDACTED]. On or about March 22, 2006, the applicant filed an Application for Immigrant Visa and Alien Registration (Form DS-230) as a child following to join [REDACTED], indicating that he is residing in the UAE. On March 25, 2006, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his mother.

On appeal, the applicant contends that the denial of his waiver is not humanitarian. *See Form I-290B*, dated September 2, 2003. In support of his contentions, the applicant submitted the referenced Form I-290B, a letter from his mother and financial documentation in regard to his mother. The entire record was reviewed in rendering a decision in this case.

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.

The applicant accrued unlawful presence in the United States from December 19, 2001, the date on which he turned 18 years of age, until January 17, 2003, the date on which he departed the United States. On appeal, the applicant does not contest the officer in charge's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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).

Since an applicant's qualifying relative is not required to reside outside the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme

hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence. 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).

The record reflects that [REDACTED] is a native and citizen of Pakistan who became a lawful permanent resident in 2005. The applicant is in his 20's and [REDACTED] is in her 40's.

On appeal, the applicant states that he and his mother's hearts have been broken and they have been in a place of sorrow and grief since the denial of his waiver application. He states that their home, future plans and their chance to live together in the best place in which to earn a living have been broken. He states that he and his mother have a strong bond and they lived together until he was 19 years old. He states that it is solely his religious duty to serve his parents and since his mother is aging and single, he is her best asset. He states that he plans to finish a bachelor's degree in Aerospace Engineering when he returns to the United States. He states that he will be able to provide for his mother. He states that he has a brother and sister in the United States. The applicant, in the letter accompanying the Form I-601, states that his mother will be left alone, emotionally unsettled and scared because he will be unable to live with her. He states that she will have difficulty supporting herself because she is uneducated and getting older.

[REDACTED], in her letter, states that she left Pakistan because she was mistreated and disrespected by her ex-husband and his family. She states that she has remained a single mother who works to support her three children. She states that she used to work at a coffee shop and now works at CVS Pharmacy as a cashier. She states that she makes close to minimum wage, which is barely enough to support herself, let alone her children. She states that it is a hardship to pay her rent and utilities by herself because her two other children have their own responsibilities and bills to pay. She states that her oldest son has left the house and, while she currently is living with her daughter, her daughter is planning to get married and will also leave the house. She states that her daughter has been the breadwinner in the household and there will be no one to help support her financially once her daughter is married. She states that the applicant will support her if he returns and he is a self-sufficient individual. She states that since the applicant's waiver was denied, she has been unable to sleep or eat properly and her daughter says that she is depressed. She states that her daughter is concerned for her health and thinks she will need to consult a doctor soon. She states that her worst fear is to die alone without her children. [REDACTED], in the letter accompanying the Form I-601, states that she has had bouts of depression, which were exacerbated when she learned that her son's stepmother is mistreating her son while he resides in the UAE with his father.

There is no evidence in the record that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by individuals whose families are separated as a result of removal. While the AAO acknowledges that [REDACTED] has experienced depression as a result of separation from her son, the record does not distinguish her emotional reaction to her separation from the applicant from that commonly experienced by families upon removal.

While [REDACTED] asserts that she needs the applicant's income in order to be able to support herself, the record does not demonstrate that she would be unable to support herself without the applicant's presence. The record shows that, even without assistance from the applicant, based on her 2007 40 hour work-week salary at CVS, [REDACTED] is capable of earning sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. Moreover, there is no evidence to

establish that [REDACTED]'s adult children in the United States, or the applicant from the U.A.E., even though they do not reside with [REDACTED], would be unable to supplement [REDACTED]'s income. While the AAO acknowledges that [REDACTED] may have to lower her standard of living, the record does not contain sufficient evidence to establish that she would be unable to support herself. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support herself, even when combined with the emotional hardship described above.

[REDACTED], in her letter, states that she wishes conditions in Pakistan were better, as she would consider living there with her son. However, she notes that robbery, rape, abuse, abduction and random killings occur there on a daily basis with no consequences for the perpetrators and that there is no assurance of safety from one day to the next. [REDACTED], in the letter accompanying the Form I-601, states that she will be unable to have a decent life in Pakistan. She states that her employment prospects abroad are poor because of her age and background. She states that it will be difficult assimilating to the culture after living in the United States for such an extended period of time. She states that she would have to leave her other children in the United States and the thought of being without them pains her greatly.

Having analyzed the hardships the applicant and [REDACTED] claim she would suffer if she were to join the applicant in Pakistan, the AAO finds that they do not constitute extreme hardship. There is no evidence in the record that [REDACTED] and the applicant would be unable to obtain *any* employment in Pakistan. While the employment they may be able to obtain in Pakistan may not be comparable to the employment they would have in the United States or allow for the same standard of living, economic detriment of this sort is not unusual or extreme. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). There is no evidence in the record, besides [REDACTED]'s letter, that she would be subject to an increased crime rate in Pakistan. While the hardships that would be faced by [REDACTED] in relocating to Pakistan, including her readjustment to the culture, economy, environment, separation from family, and an inability to obtain the same opportunities she would receive in the United States, are unfortunate, they are the types of hardships routinely encountered by a parent joining a removed alien in a foreign country. Additionally, the AAO notes that the applicant is a Canadian Landed Immigrant and may be able to reside in Canada with his mother. Moreover, the AAO notes, as previously indicated, that the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions and difficulties that arise whenever a child is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are

insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident mother as required under section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The application is denied.