

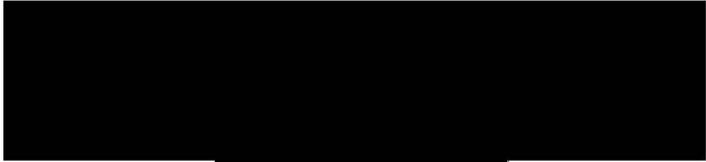
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U.S. Citizenship  
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Services

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FILE:

Office: ROME (ISLAMABAD)

Date: OCT 10 2006

IN RE:



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:

SELF-REPRESENTED

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 District Director (district director), Rome. 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 seeks a waiver of inadmissibility in order to enter the United States and reside with her U.S. citizen husband.

The district director found that, based on the evidence in the record, the applicant failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *Decision of the Acting District Director*, dated September 16, 2004.

On appeal, the applicant asserts that she and her husband will suffer emotional and economic hardship should she be prohibited from entering the United States. *Statement from Applicant on Appeal*, dated October 11, 2004. She further states that her husband has health problems that contribute to his hardship. *Statement from Applicant on Form I-290B*, dated October 11, 2004.

The record contains statements from the applicant and her husband; copies of medical documents for the applicant's husband; copies of documentation of fertility treatments obtained by the applicant and her husband; a copy of the applicant's husband's U.S. passport; copies of the permanent resident cards for the applicant's husband's parents; a copy of the applicant's marriage license; copies of tax and financial records for the applicant's husband; a copy of the applicant's husband's naturalization certificate, and; documentation of Immigration Court proceedings in which the applicant was ordered deported in absentia. The entire record was reviewed and considered in rendering 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

(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 matter, the record indicates that the applicant was admitted to the United States as a nonimmigrant visitor for pleasure on October 27, 1989, with authorization to remain until October 26, 1990. She was granted voluntary departure until January 6, 1991, yet she failed to depart. An Order to Show Cause was issued to the applicant on May 21, 1991, yet the applicant failed to appear for proceedings before an immigration judge. Accordingly, she was ordered deported in absentia on October 4, 1991. The applicant did not depart the United States until April 17, 1998. The applicant accrued unlawful presence in the United States from April 1, 1997, the date the unlawful presence provisions were enacted, until April 17, 1998, the date she departed the United States. This period totals over one year.<sup>1</sup> The applicant now seeks reentry to the United States as a permanent resident. Accordingly, the applicant was deemed inadmissible under section 212(a)(9)(B)(II) of the Act 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 does not contest her inadmissibility on appeal.

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. Hardship the alien herself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 pursuant to section 212(i) of the Act. These 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.

On appeal, the applicant asserts that she and her husband will suffer hardship should she be prohibited from entering the United States. *Statement from Applicant on Appeal*, dated October 11, 2004. The applicant

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<sup>1</sup> The district director noted that the applicant accrued approximately nine years of unlawful presence in the United States. However, as the unlawful presence provisions under the Act were not enacted until April 1, 1997, the applicant did not begin to accrue unlawful presence until that date.

states that her husband closed his business in the United States due to his frequent travel to Pakistan to visit her. *Id.* at 1. She indicates that, while her husband now has taken a job with an employer, the closure of his business represents a significant financial and emotional loss. *Id.* The applicant states that her husband suffers from health conditions, including high blood pressure and diabetes. *Id.* The applicant provides that she and her husband share a close relationship, and that separation is causing them substantial emotional hardship. *Id.* She states that her husband's parents are residing in Pakistan with her, as they do not wish to leave her alone. *Id.* The applicant explains that she and her husband wish to have children, yet they have been unable to conceive despite fertility treatments. *Id.* at 2. She noted that her husband believes they have been unable to conceive due to the stress of their separation. *Id.*

The applicant's husband stated that he loves the applicant and they share a close bond. *Statement from Applicant's Husband*, submitted with Form I-601. He described at length his and the applicant's desire to have children, and their unsuccessful efforts to conceive despite the assistance of fertility treatment. *Id.* The applicant's husband indicated that he is enduring hardship due to the need to travel to Pakistan to visit the applicant. *Id.* He provided that he has no source of income in Pakistan, which requires him to save money in the United States in order to subsist there. *Id.* The applicant's husband expressed that he is embarrassed to attend family and religious functions due to the facts that he has no children and his wife is outside the United States. *Id.* He provided that he has health problems for which he takes medication, including high blood pressure, "light sugar," and high cholesterol. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from entering the United States. The evidence of record contains explanations of hardships that the applicant herself is enduring due to her inadmissibility. However, hardship to the applicant is not a relevant concern in the present matter. Section 212(a)(9)(B)(v) of the Act. While the AAO acknowledges that the applicant will bear significant consequences if she continues to be separated from her husband, only hardship to the applicant's husband may be properly considered in this section 212(a)(9)(B)(v) waiver proceeding.

The applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States. The applicant explains that her husband is experiencing financial hardship due to her absence. However, the applicant has not provided sufficient documentation for the AAO to fully assess the economic consequences her husband is enduring. For example, the applicant attests that her husband closed his business, yet the record contains no evidence of this, or documentation to reflect whether he sold the business or its assets for a profit. The applicant provides that her husband accepted a position with an employer, yet she has not submitted evidence to show his current income. Nor has the applicant provided a clear account of her husband's regular expenses such that the AAO can determine if he is able to meet them. Further, the applicant has not shown that she works or would earn income in the United States, such that she could assist her husband financially. 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 applicant's husband provided that he has no source of income in Pakistan. However, as a native of Pakistan, it is assumed that he may legally work there and he is familiar with the local language and culture. The applicant has not described her husband's professional skills or experience, such to show that he would be unable to utilize them in Pakistan.

The AAO acknowledges that maintaining two households requires additional expenses, and that international travel and correspondence is costly. However, the applicant has not submitted adequate documentation in order to show whether her husband can meet such expenses. Thus, the applicant has not established that her husband would experience significant economic hardship due to her absence.

The applicant and her husband express that they are suffering emotionally due to their inability to conceive a child. The record contains documentation to show that they have obtained fertility treatment, including such treatment in Pakistan. Thus, it is evident that the applicant and her husband may continue to pursue such assistance if the applicant remains in Pakistan. The AAO acknowledges that the applicant and her husband must be together in order to conceive a child. However, the record does not establish that the applicant's husband cannot relocate to Pakistan in order to do so. As noted above, the applicant's husband is a native of Pakistan, and thus he would not be compelled to endure the challenges of adapting to an unfamiliar language and culture should he return there. Should the applicant's and her husband's desire to have a child prove paramount, as suggested by the record, they may reside together abroad in order to pursue this goal. However, as a U.S. citizen, the applicant's husband is not required to reside outside the United States as a result of the applicant's inadmissibility.

The applicant and her husband state that the applicant's husband suffers from health problems, including high blood pressure, diabetes or "light sugar," and high cholesterol. However, the record lacks a clear explanation from a medical professional regarding the severity of these conditions, or an indication of whether the applicant's husband utilizes or requires the applicant's assistance. Nor has the applicant shown that adequate medical care for these common conditions is not available in Pakistan.

The applicant provides that her husband is experiencing emotional hardship due to intermittent separation from her. The applicant's husband explained that he is embarrassed to attend religious functions in the United States due to the absence of the applicant. While the AAO acknowledges that such separation is emotionally difficult, the applicant has not shown that her husband is suffering unusual consequences that go beyond those commonly experienced by family members of those deemed excludable or inadmissible.

In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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 husband will endure hardship as a result of separation from the applicant, or as a result of relocating to Pakistan. However, his situation is typical to the family members of those deemed inadmissible and does not rise to the level of extreme hardship.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from entering the United States, considered in aggregate, do not rise to the level of

extreme hardship. 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.