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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: APR 23 2007

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act (INA), 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. 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 is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. She seeks to adjust her status to that of lawful permanent resident, (LPR); however, she was found to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having entered the United States in 1988 using a passport in another person's name. The record reflects that the applicant and her spouse have two U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children.

The district director denied the waiver application after concluding that the applicant had failed to establish extreme hardship to her spouse. On appeal, counsel asserts that Citizenship and Immigration Services (CIS) committed several errors of fact regarding pertinent dates; however, upon review it appears these were typographical errors only and did not contribute to the district director's conclusions. Counsel also contends that CIS erroneously analyzed the hardship factors presented, and that the applicant's husband would suffer psychological consequences rising to an extreme level should the applicant be removed. The entire record was reviewed in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted use of someone else's passport to procure admission into the United States in 1988. Counsel does not contest the district director's determination of inadmissibility.

Section 212(i) provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). Hardship to the alien herself or to her children is not a permissible consideration under the statute. A § 212(i) waiver is therefore 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 pursuant to § 212(i) of the Act. 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).

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 that the applicant's spouse is not required to reside outside the United States based on the denial of the applicant's waiver request, the applicant must establish that he would experience extreme hardship whether he remains in the United States or relocates to Pakistan.

The AAO notes that the record contains several references regarding the hardship that the applicant's children would suffer if the applicant were refused admission. As previously indicated, section 212(i) of the Act provides that a waiver of inadmissibility under § 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relative for whom the hardship determination is permissible. Hardship experienced by the applicant's children as a result of her removal will be considered only as it affects her husband.

To establish extreme hardship to the applicant's spouse, counsel relies on a psychological report regarding the applicant, her husband, and their children. The assessment is based on four interviews of unkown duration conducted on April 11, 15, and 29, 2003 and May 6, 2003 by the psychologist [redacted], Ph.D. The psychological report consists of a recounting of the applicant's and her family's background information and their fears about the future. Dr. [redacted] states that the applicant's husband would be unable to work as a computer operator if he returned to Pakistan, and that he would be forced to live in poverty. The record contains no evidence in support of this claim, however. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in these proceedings. *See 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)). Dr. [redacted] also asserts that relocation to Pakistan would undermine the lifestyle, identity and self-esteem of the applicant's husband. If the applicant were to return to Pakistan

without her husband and children, Dr. [redacted] concludes, it would result in an extreme sense of loss and depression for the entire family and the end of the marriage.

On appeal, counsel contends that if the applicant were removed from the United States, the resulting hardships experienced by the applicant's children would also be their father's hardships. At the time of filing, counsel asserted that, were the family to relocate to Pakistan, it would be devastating to the applicant's husband to watch as his children tried to adapt to Pakistan, having lost their education, friends and way of life. The AAO acknowledges counsel's assertions regarding the effect of the hardship experienced by the applicant's children on their father. However, Dr. [redacted], whose report considers the applicant's children at some length, does not make this same linkage. Accordingly, the AAO will not consider whether the hardships experienced by the applicant's spouse, when combined with those of his children, would rise to the level of extreme hardship. Without supporting documentation, the assertions of counsel are insufficient to meet the burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 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).

Dr. [redacted] report also indicates that the applicant's husband is already experiencing symptoms of anxiety and depression, including sadness, diminished concentration and motivation, and obsessive thought. He concludes that the applicant's removal could potentially cause her husband to suffer extreme anxiety and intense depression, possibly interfering with his ability to function. Despite this diagnosis, Dr. [redacted] does not recommend any medical or psychological treatment for the applicant's husband's current symptoms or for dealing with the potentially debilitating anxiety and depression that, Dr. [redacted] states, could follow the applicant's removal.

The AAO has carefully considered the information contained in the psychological report, and acknowledges that the applicant's spouse will be faced with difficult challenges and emotional hardship in the event the applicant is removed. However, nothing in the reports indicates that the applicant's husband's experience would be more negative than that of similarly situated individuals, such that his suffering could be considered extreme.

Although the applicant's husband's anxiety is not taken lightly, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship there exists affection and emotional and social interdependence, and a separation or involuntary relocation nearly always results in considerable hardship to individuals and families. Yet 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 exists.

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 failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i). In proceedings for application for waiver of grounds of inadmissibility under § 212(i) 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.