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

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FILE: [redacted] Office: ATLANTA (CHARLOTTE) Date: MAY 30 2007

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the interim director, Atlanta, Georgia, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of Pakistan, was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband and children.

The interim director concluded that the applicant had failed to establish that extreme hardship would be imposed on her spouse, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband and children would suffer extreme hardship if the applicant were required to return to Pakistan, and submits additional documentation in support of the application. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

> (i) 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.

Section 212(i) of the Act provides that:

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

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant and her husband were married in Pakistan on January 12, 1995. After the applicant was denied a visa to enter the United States, her mother and uncle paid between $2000 and $3000 to obtain a passport and visa from a person whom she resembled. She entered the United States as an imposter on this passport on February 20, 1995. She states that she does not remember the name on the passport.

Thus, the applicant attempted to enter the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). A Form I-130, Immigrant Petition for Alien Relative, filed on behalf of the applicant, was approved on November 21, 2000. The applicant filed

Form I-485, Application to Register Permanent Resident or Adjust Status, on February 11, 2002, and the instant Form I-601 was filed simultaneously.

The AAO first turns to counsel's assertion that the applicant made a "timely retraction" of the fraud or willful misrepresentation committed upon her entry into the United States, as provided in the *Foreign Affairs Manual*. In her appellate brief, counsel states the following:

> In the instant case, Service decision does not reflect any discussion regarding a Retraction. In fact, the applicant **did** make a retraction through the beneficiary when the Application for I-130 was field in January 1998. . . .
>
> In answering question #14, the petitioner who is the qualifying family member, clearly stated that the applicant entered as a visitor using a different name in 2/1995 . . . The applicant further corroborated this information at her interview [in] October 2002.
>
> As explained by the above, [the] applicant's misrepresentation upon entry was made known to the Service at the first viable opportunity, with the filing of the I-130 petition in January 1998. The only other option prior to retraction would have been to physically turn-in the applicant to the authorities. . . .

The AAO does not agree with counsel's analysis. First, the AAO notes that under this analysis, any alien who enters the United States fraudulently would have that fraud forgiven as soon as an immigrant petition is filed, so long as he or she files an immigrant petition after they enter and, when applying for that benefit, concede inadmissibility. This would render the inadmissibility sections of the Act meaningless. In this case the applicant's first viable opportunity would have been at the time she presented the fraudulent passport to the immigration inspector.

Moreover, the AAO notes that the applicant's purported timely retraction in this case came after she had achieved the benefit of entering the United States. She is still receiving the benefit of her fraud or willful misrepresentation, as she is still present in the United States.

The record contains several references to the hardship that the applicant's children would suffer if the applicant were to depart the United States. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant or her children cannot be considered, except as it may affect the applicant's husband.

Thus, the next issue to be addressed is whether the applicant's return to Pakistan would impose extreme hardship on her husband, the qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

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 *Perez*

v. INS, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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 that:

> 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).

The record reflects that the applicant's husband is a forty-year-old citizen of the United States. He has been a citizen since 2000, and has lived in the United States for twenty-two years. He and the applicant have been married since January 12, 1995, and have two United States citizen sons together; they are nine and eleven years old, respectively. The applicant's husband also has a United States citizen daughter from a previous marriage.

The record contains two affidavits from the applicant and two affidavits from her husband.

In her first affidavit, dated January 30, 2002, the applicant provided details regarding her 1995 entry into the United States. In her second affidavit, dated October 6, 2003, the applicant discussed the situation in Pakistan that led her to obtain the false passport. She also addressed the hardship that her husband is currently facing, stating that she must face the pain that her husband fights every day; that he has no good choices; that he carries the pain every moment of every day; and that she would never wish his burden on her worst enemy.

In his first affidavit, dated October 30, 2002, the applicant's husband states that he is concerned that his children would be denied their mother and principle caregiver should the applicant be required to return to Pakistan; that, although he participates in the responsibilities of parenting the couple's children, that she handles most matters relating to the children's day-to-day needs; that it is unthinkable for the couple

to send the children to Pakistan; and that he believes he would not be able to care for the children adequately without the applicant, as he is absorbed in the responsibilities of running his business.

In his second affidavit, dated October 6, 2003, the applicant's husband states that he was born in Bangladesh and has only visited Pakistan, the country of the applicant's citizenship, twice; that his children have never been to Pakistan or Bangladesh; that his parents and sisters all live in the United States; that his youngest sister has been diagnosed with severe developmental retardation, still lives with her parents, and that there is little likelihood that she will ever gain any significant control over her own life;[1] that he and his daughter from his first marriage share a close bond and are integral parts of each other's lives; that his two sons with the applicant love and adore their older sister; that his daughter (from the previous marriage) would be devastated if he left the United States; that he has worked hard to achieve the American Dream via his ownership of five retail clothing stores in North Carolina; that he employs twelve full-time persons in his stores; that, since he has no partners, his employees would lose their jobs if he were to relocate to Pakistan; that he would face personal financial disaster if he were forced to support two households (one in the United States, one in Pakistan); that he would find it impossible to justify a decision that would separate his sons from the applicant, who is their primary caretaker; that sending his sons to Pakistan is unthinkable; that leaving the United States and moving with the applicant to Pakistan would entail leaving behind everything for which he has worked; that his daughter would be devastated by the apparent loss and rejection of her father if he relocated to Pakistan; that he could not bear the pain of watching his children suffer the loss of one of their parents or, in the alternative, be uprooted from their only known environment and placed into a country whose people are hostile to Americans; and that he could not relocate to Pakistan because he is Bangladeshi.

The record also contains an affidavit, dated October 20, 2003, from the applicant's husband's previous wife. She states that the special attention the applicant's husband has lavished upon their daughter "has transformed this child's life and all predictable impact of a divorce has been eradicated." She states that if the applicant's husband were to relocate to Pakistan, he would not be able to survive the torture of seeing his children suffer. Specifically, she states the following regarding his dilemma:

> [The applicant's husband] would not be able to look himself in the mirror if he were to abandon his first-born. He would just die under the loss of his daughter . . . [The applicant's husband and his first wife's daughter,] on the other hand [would] lose the most important relationship of her life.
>
> [The applicant's husband] would also suffer a huge financial loss and would have to start all over. However, this by comparison to the pain and agony he would feel daily is secondary.
>
> I understand there is no duty for [him] to go to Pakistan. So his other choice of living death would be to stay here in the United States. . . .
>
> As mentally strong and stable as he is, sometimes too much so, this situation will cause him to breakdown and I believe it is because he cannot conceive his children suffering. . . .

[1] The applicant's husband has submitted no evidence to demonstrate that he provides financial or other support of his sister, or that she depends upon him for care. Nor has he submitted any evidence to verify her diagnosis.

The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy.

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to return to Pakistan, regardless of whether her husband and sons accompany her to Pakistan or remain in the United States.

Particularly if he remains in the United States with the children, the record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, demonstrates that the applicant's husband faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the emotional hardship and family disruption that he would face 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. That the applicant would lose health insurance coverage if she returns to Pakistan would also be a common result of deportation, and does not rise to the level of "extreme." Nor are there any medical issues present in this case that would exacerbate the hardship that the applicant's husband would face upon his wife's return to Pakistan. The childcare expenses he would face upon his wife's return to Pakistan would be no higher than that normally expected, either. The record also establishes that although he would face cultural adjustment if he accompanied the applicant to Pakistan, such adjustment is common and would be normally experienced by individuals in the applicant's husband's situation.

As noted previously, United States 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 finds that the interim director properly denied the waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that, if he remains in the United States with the couple's children, the

applicant's husband would suffer hardship beyond that normally expected upon the deportation or refusal of entry of a spouse.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 finds that the district director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

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