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U.S. Citizenship and Immigration Services

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SEP 17 2007

FILE: [redacted] Office: ISLAMABAD, PAKISTAN Date:

IN RE: Applicant: [redacted]

APPLICATION: 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 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge (OIC), Islamabad, Pakistan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, [redacted] is a native and citizen of Pakistan who 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), for seeking admission into the United States by fraud or willful misrepresentation. The applicant is married to [redacted] who is a lawful permanent resident of the United States. [redacted] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the Acting OIC denied, finding that [redacted] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the OIC*, dated May 4, 2004.

The AAO will first address the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:
>
> 1. the alien is excludable on the true facts, or
> 2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The record reflects that the applicant misrepresented a material fact by submitting fraudulent documents to a consular officer in connection with an application for a visa. *Decision of the OIC, dated May 4, 2004; Affidavit signed by* [redacted] Based on the evidence in the record, the OIC was correct in finding the applicant inadmissible under Section 212(a)(6)(C) of the Act.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

Section 212(i) of the Act provides that:

> (1) 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.

The applicant seeks a waiver of inadmissibility. A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 to the applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is [redacted]. Hardship to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's husband. 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 addition to other documents, the record contains a letter from the applicant and a letter and an affidavit from her husband. In her letter, [redacted] states that her husband is in danger when he visits her in Pakistan because he is an American. She indicates that she is pregnant and would like to have her husband with her. [redacted] states that her family is depressed on account of separation, and that her husband is worried about their safety in Pakistan. [redacted] states that her husband has diabetes and high blood pressure for which he takes medication and goes to the hospital.

In his letter, [redacted] indicates that he has lived in the United States for 20 years and has roots here. He states that he attended college in the United States and works here. [redacted] conveys that traveling to Pakistan is expensive. He indicates that he feels nervous in Karachi on account of its high rate of crime, and because he has been stopped by strangers who have threatened him. He conveys that his wife needs him and he worries about leaving her and his children in Pakistan.

[redacted] statements in the affidavit are similar to those made in the letter. In addition, he states that he would not be able to follow dietary restrictions to control his diabetes and high blood pressure in Pakistan. He states that his daughters are young and need his affection and supervision. He conveys that he is experiencing the recent death of his mother and that his father, who lives in Karachi, will be moving to Canada.

Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record fails to establish that the applicant's husband would endure extreme hardship if he remains in the United States without his family.

[redacted] states that flying back and forth to Pakistan for several years has been an extreme financial hardship. The record, however, contains no documentation in support of this assertion, such as [redacted] income and the household expenses in the United States and those of his wife and children in Pakistan. 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)).

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The letter and affidavit from [redacted] reflect that he is very concerned about separation from his wife and children. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [redacted], if he remains in the United States, is typical to individuals

separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. *See Hassan, Shooshtary, Perez,* and *Sullivan.*

The record is insufficient to establish that [redacted] would endure extreme hardship if he joined his wife in Pakistan.

The conditions in Pakistan, the country where the applicant's husband would live if he joined her, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The AAO is not persuaded that extreme hardship has been established to [redacted] on account of his concern about his safety while in Pakistan. [redacted] stated that every time he is in Pakistan he is "stopped by negative elements" and asked "silly questions" and is sometimes threatened. He states that one day three young men stopped him and one of the men took his arm and said "hey, you like what is happening in Iraq" and "why don't you go to Iraq and fight." He said one of the men said "we are not going to leave you and don't think that you can go back to America." The AAO finds that being asked "silly questions" is not sufficient to establish that living in Karachi is unsafe for [redacted] or his family. Furthermore, although Mr. [redacted] wife has been living in Pakistan since they wed in January 1996, the record contains no evidence of specific harm occurring to her or the applicant during his visits to Pakistan.

The submitted newspaper articles are about general violence in Karachi and are insufficient to show that crime is so prevalent that the [redacted] are in danger. It is noted that Karachi had an estimated population of 11,624,219 in 2005. *See* U.S. State Department Background Report. "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS,* 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted). 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 medical documents in the record fail to show that [redacted] is being treated for diabetes and high blood pressure. The Medical Certificate is not legible. The document from the Toepperwein Family Practice, P.A., indicates that [redacted] was treated for acute bronchitis and the interpretation of the results of the tests performed by Quest Diagnostics is not in the record. There is no evidence showing that diabetes and high blood pressure are conditions for which treatment is unavailable in Pakistan. There is no evidence showing that [redacted] will not be able to adhere to dietary restrictions in Pakistan. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

[redacted] states that he has roots in the United States, where he has lived for 20 years; however, the difficulties associated with adjustment do not establish extreme hardship. *See, e.g., Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986) (difficulties of readjustment to Mexican culture and environment are not

sufficient to establish extreme hardship). Furthermore, [redacted] trips to Pakistan and the presence of his family will assist him in readjusting to life in Pakistan.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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(i) of the Act, 8 U.S.C. § 1182(i), the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.