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

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SEP 19 2007

[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date:

IN RE: [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:

[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 District Director, Los Angeles, California, 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 wife of a citizen of the United States, 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.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, 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 would suffer extreme hardship if the applicant were required to return to China, and submits additional documentation in support of the application. Counsel also contends that the District Director should have considered hardship to the applicant's children. 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.

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 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 United States citizen husband is the only qualifying relatives, and hardship to the applicant or her children cannot be considered, except as it may affect 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).

Regarding the applicant's grounds of inadmissibility, the record reflects that the she attempted to enter the United States, fraudulently, on September 16, 1995. Upon arriving in the United States, she presented a United States visitor's visa passport issued to '[redacted]' which she later told an immigration officer had been given to her by a family member. She withdrew her application for admission and departed the United States that day. She entered the United States, without inspection, later that year via the United States-Mexico border. Thus, the applicant attempted to enter the United States by making a willful misrepresentation of a material fact (her identity). Accordingly, the applicant is 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).

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. In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA 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.

The record reflects that the applicant's husband is a forty-two-year-old lawful citizen of the United States. He has lived in the United States since 1985 and has been a citizen since 1998. He and the applicant have been married since March 10, 1997, and have a six-year-old daughter and a one-year-old son. Both children are citizens of the United States.

In an affidavit submitted with the Form I-601, the applicant's husband stated that he is a loyal citizen of the United States and has no intention of returning to Pakistan; that his parents and all siblings save one are either long-time residents or citizens of the United States; that his primary language is English; that he did not learn of his wife's immigration violation until March 1, 2001, the date of her interview; that he

loves the applicant deeply; that he and his daughter cannot live without the applicant; that he and his daughter would suffer extreme hardship if forced to relocate to Pakistan; that he has no training or opportunity for work in Pakistan and would not be able to sustain himself and his family in Pakistan; and that his entire existence is rooted in the United States.

The applicant also submitted a letter from [redacted] dated October 30, 2003, stating that the applicant's husband takes care of his parent's medical needs, providing transportation to appointments and translating for them. The applicant's husband's parents also submitted a letter, dated October 3, 2003, confirming [redacted].

The director denied the petition on December 23, 2005.

On appeal, counsel submits affidavits from the applicant's husband's parents and the applicant's husband's brother. Counsel also submits two articles and two letters attesting to the importance of having both parents in a child's life, as well as letters attesting to the applicant's good moral character.

In his February 23, 2006 affidavit, the applicant's husband states, in addition to the information contained in his previous affidavit, that he had no gainful employment while living in Pakistan; that he has no friends or social connections in Pakistan; that he has no opportunities for employment in Pakistan; that he lives in the same apartment complex in Texas as his parents and, along with his family, supports them; that the applicant has one sister in Pakistan, but that she is married, lives in a one-bedroom apartment, and cannot assist the applicant; that the applicant's parents live in Florida and are unable to provide the applicant with any financial assistance; that the applicant is a stay-at-home mother and provides full-time childcare; that he would not be able to afford childcare if the applicant were to return to Pakistan; that he would not allow the children to return to Pakistan if the applicant returned; that he would not return to Pakistan if the applicant were required to return; that the family would be forced into homelessness if the applicant were required to return to Pakistan; that he would be left and abandoned as a widower if the applicant were required to return to Pakistan; and that he and the children would be unable to visit or support the applicant in Pakistan.

In his February 23, 2006 affidavit, the applicant's husband's mother states that she is seventy years old; that she suffers from diabetes, heart disease, and high blood pressure; that she has to see a doctor every two to four weeks; that her husband is also diabetic; that the applicant's husband looks in on them every day; that the applicant's husband translates for them; that they could not live independently without the applicant's husband; and that it is essential that they live near the applicant's husband, and that he have the applicant with him.

In his February 23, 2006 affidavit, the applicant's husband's father repeats the assertions of the applicant's mother.

In his February 22, 2006 affidavit, the applicant's husband's brother states that he employs the applicant's husband at his business; that he only employs family members; that, due to the nature of the business, work schedules must be flexible; that the family supports the parents; that the applicant's husband is an integral part of the family and that he would be unable to run the business without him; that the applicant's husband has strong personal, family, and economic ties to Waco, Texas; and that it is essential to the applicant's husband's well-being, as well as that of the entire family, for him to remain in the United States with the applicant.

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." [redacted] *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."); [redacted] (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. 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).

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." [redacted] *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 he accompanies her to Pakistan or remains in the United States.

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 husband will face extreme hardship if the applicant returns to Pakistan. If he remains in the United States without the applicant, the record fails to establish that she would face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son is removed from the United States or refused admission. As presently constituted, the record fails to establish that the financial strain and emotional hardship he would face would be any greater than that normally be expected upon separation. That he would be faced with increased childcare costs, and a resultant decrease in standard of living, is not unique to this case and is faced by all parents in the applicant's husband's situation. That the applicant's husband would be required to support two households is faced by every spouse in his situation. The applicant has also failed to demonstrate why her husband's siblings would not be able to assist his parents in his absence. That he would face diminished job prospects in Pakistan is not unique to this situation, either. The presence of family members in the United States further diminishes the claim that separation from the applicant would be harder for her husband that for other spouses in similar situations. Although the AAO cannot

consider hardship to the children, it does note that the issues raised in the articles and letters (i.e., fear of abandonment, etc.) are present in every case involving children.

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 husband would suffer hardship 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.