identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3100
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: CHICAGO Date: SEP 21 2007

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), 8 U.S.C. section 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, and 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 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The record reflects that the applicant and her husband, [redacted] were married in Pakistan on December 21, 1997. [redacted] a native of Pakistan who became a naturalized U.S. citizen on February 7, 2002, filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on July 24, 1998. The petition was approved on August 13, 1998. The applicant obtained a tourist visa on August 14, 2000 by misrepresenting her identity to an officer of the Legacy Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)). She used this visa to obtain admission to the United States on September 15, 2000. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on May 7, 2002. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 14, 2004.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director* [redacted], dated September 12, 2005.

On appeal, counsel submits additional evidence and contends that the evidence is sufficient to demonstrate that extreme hardship would be imposed on the applicant's husband by the bar to the applicant's admission.

The record includes a copy of the applicant's marriage certificate; a copy of the [redacted] naturalization certificate; affidavits from the applicant and her spouse; letters from the applicant's in-laws; documentation regarding the medical condition of the applicant's father-in-law; tax, financial, insurance, mortgage and business documents for the applicant and her spouse; family photographs; and country conditions reports for Pakistan. The record was reviewed in its entirety to render this decision.

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.

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.

A waiver of inadmissibility under section 212(a)(6)(C) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, her child or her father-in-law is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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 applicant 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 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.

> 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).

U.S. courts have stated, "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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event

that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel contends that the applicant's husband will suffer extreme hardship should he accompany the applicant to Pakistan because he will lose his U.S. business (a convenience store that he owns and operates) and face poor employment prospects because he lacks formal education and does not own land or possess the marketable skills needed to prosper in Pakistan's predominantly agricultural economy. Counsel asserts that the applicant's husband will not be able to depend on the support of family in Pakistan, as his father and siblings all reside in the United States. The applicant's husband will suffer emotional hardship from being separated from his family, including not being able to visit his mother's grave, and from struggling to support his wife and son financially.

Counsel also asserts that the applicant's husband will suffer extreme hardship if he does not accompany his wife to Pakistan. He contends that the applicant's husband will suffer emotionally from being separated from his wife and from anxiety over her wellbeing as a solitary woman in Pakistan without the support of her family. He also maintains that the applicant's husband will be deprived of the primary caregiver for his three-year-old son and for his invalid father, which could result in him losing his business because he will have to provide such care himself. Counsel observes that the applicant's father-in-law cannot live with other family members because his health problems require him to live in a warm climate.

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 spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse would suffer emotionally from being separated from his spouse if he did not relocate to Pakistan with her. However, his situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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.

The record shows that the applicant and her spouse were separated for a significant period of their marriage, but the applicant has not submitted evidence showing that her spouse experienced extreme hardship as a result of this separation. Furthermore, the applicant has not submitted sufficient evidence showing that her spouse would be compelled to close his business if she were not present to care for his father. The assertions made by the applicant and her spouse are relevant and have been taken into consideration, but little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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 AAO also recognizes that the applicant's spouse would experience social and financial disruption, including separation from members of his immediate family, if he relocated to Pakistan. However, the applicant has not submitted sufficient evidence showing that this disruption amounts to hardship beyond that typically experienced as a consequence of removal or inadmissibility. The record shows, for instance, that the applicant's spouse owns his own business, which he purchased in 2005. However, the record lacks evidence showing the income, if any, the applicant's spouse derives from his business or other evidence showing with specificity that the applicant would be unable to sell his business and find employment (or purchase and operate his own business) in Pakistan should he relocate there. The assertion by counsel and the applicant's spouse that he would face poor employment prospects in Pakistan because he lacks formal education and does not own land or possess the marketable skills needed to prosper in Pakistan's predominantly agricultural economy is relevant and has been taken into consideration, but little weight can be afforded it in the absence of supporting evidence. *Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(h) of the Act. 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), the burden of establishing that the application merits approval 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 denied.

ORDER: The appeal is dismissed.