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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: JUN 02 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland 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 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to 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 reside in the United States with his spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated September 19, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Attorney's brief*, undated.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, published media and country conditions reports on Pakistan; tax statements and W-2 Forms for the applicant and his spouse; medical records for the applicant; statements from family members and friends; a life insurance policy; bank statements; a telephone bill; a statement from the applicant's spouse; a car insurance policy; and employment letters for the applicant and his spouse. The entire record was reviewed and considered in rendering 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.

The record reflects that on November 3, 1990, the applicant attempted to procure admission to the United States at the J.F.K. Airport in New York by presenting a counterfeit visa to immigration inspectors. *Memo to File, Immigration and Naturalization Service, J.F.K. Airport*, dated November 3, 1990. On November 14, 1990, an Immigration Judge ordered the applicant excluded and deported. *Order of the Immigration Judge*, dated November 14, 1990. On November 16, 1990 the applicant was physically deported from the United States. *Form I-170, Deportation Check Sheet.* The applicant entered the United States on a visitor's visa on September 18, 2000. *Form I-94, Departure Card.* The applicant married a United States citizen on January 13, 2003 and a Form I-130, Petition for Alien Relative was approved on September 13, 2006. *Marriage certificate; Form I-130.* The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status on February 13, 2003. *Form I-485.* Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from a 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. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Pakistan or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Pakistan, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate.* She does not speak the dominant language in Pakistan. *Attorney's brief.* Counsel asserts that the applicant's spouse would have a difficult time finding a job and income commensurate to her earnings in the United States. *Id.* The record includes tax statements and a W-2 Form showing

the earnings of the applicant's spouse. *Tax statements, W-2 Form.* While the AAO acknowledges counsel's assertion, it notes that the extreme hardship standard is not defined by the inability of the qualifying relative to earn the equivalent of what she or he would in the United States. The AAO does, however, acknowledge that the applicant's spouse's inability to speak Urdu would hinder her ability to find employment in Pakistan. Counsel for the applicant further notes that the applicant's spouse may face life threatening confrontations as a Christian American in a country that has shown hostility to non-Muslims and where Americans are targeted for crimes in the belief that they have large amounts of money. *Attorney's brief.* The record includes published media and country conditions reports which document that police failed in some instances to protect members of religious minorities—particularly Christians and Ahmadis—from societal attacks. *Pakistan, Country Reports on Human Rights Practices – 2003, United States Department of State*; See also *Torn from families and jobs, deportees face bleak future, Chicago Tribune*, dated November 17, 2003. The AAO also notes that counsel's claims regarding security are supported by the current travel warning for Pakistan issued on February 25, 2009 by the Department of State. When looking at the aforementioned factors, particularly the applicant's spouse's inability to speak Urdu, her lack of cultural ties to Pakistan and the conditions in Pakistan, the applicant has demonstrated extreme hardship to his spouse if she were to relocate with him.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. **The applicant's spouse was born in the United States.** ***Birth certificate.*** The marriage between the applicant and his spouse is the result of their emotional commitment. *Attorney's brief.* The marriage took place when the applicant's spouse was 57 years old and the applicant was 49 years old. *Id.* Counsel asserts that this is a marriage where the applicant and his spouse expected to live out their lives together. *Id.* Counsel also contends that the applicant makes a substantial contribution to the joint family income and that the loss of his income would be a hardship to his spouse's well-being. *Id.* While the record includes documentation of the applicant's and his spouse's various expenses in the United States such as car insurance, life insurance and a telephone bill, it contains no documentation to establish that the applicant's spouse is unable to meet these expenses in his absence. Furthermore, there is nothing in the record to demonstrate that the applicant would be unable to obtain employment in Pakistan and assist his spouse financially from outside the United States. Counsel also asserts that the applicant would face challenges if he returned to Pakistan, including minor but significant health related issues. *Attorney's brief.* The AAO notes that the applicant is not a qualifying relative in this waiver proceeding and that the record fails to indicate how any concerns the applicant's spouse might feel about his return to Pakistan would affect her.

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not

necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Separation from a loved one is a normal result of the removal process.

The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

The applicant has demonstrated that his qualifying relative would suffer extreme hardship if she joins him in Pakistan. However, as the record has also failed to establish the existence of extreme hardship to the applicant's spouse if she remains in the United States, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(6)(C) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility 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 dismissed.

ORDER: The appeal is dismissed.