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U.S. Department of Homeland Security
20 Massachusetts Ave. NW Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 03 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 California Service Center Director. The matter 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States with is family.

The director determined that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Director*, dated July 8, 2006.

On appeal, counsel submits new evidence regarding the applicant's child and spouse. *Form I-290B,* dated July 21, 2006.

In the present application, the record indicates that the applicant entered the United States without inspection in 1995. On March 19, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States in June 2002.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until March 19, 2002, the date of his proper filing of the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident, the applicant is seeking admission within 10 years of his June 2002 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences or his child experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse and or parent.

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 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. The BIA has held:

> 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Pakistan or in the event that she resides in the United States, as she is not required to reside outside of 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.

The first part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant is the sole income maker in the family and that the applicant's spouse and child require continual medical attention. *Form I-290B*, dated July 21, 2006. In support of these assertions, counsel submitted medical reports for the applicant's spouse and the applicant's son. The record includes a letter from [redacted], which states that the applicant's eight-year-old son underwent a bone marrow transplant on May 4, 2000, in an effort to cure his diagnosis of Thalassemia Major. *Letter from* [redacted] dated July 14, 2006. Dr. Sahdev states that the applicant's son continues to be seen twice yearly in the hospital's outpatient clinic. *Id.* The AAO notes, as stated above, that hardship the applicant's child experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. The applicant has not shown how in his absence, his son's illness will cause the applicant's spouse hardship. There is no indication of the care and/or costs involved in monitoring the son's health, except for semi-annual visits to the doctor. There is also no indication of the roles each member of the family plays in caring for their son. In addition to the letter regarding the applicant's son, the record includes a letter from [redacted], which states that the applicant's spouse suffers from severe arthritis, right elbow tendonitis, asthma, lower back syndrome and diabetic new onset. The doctor states that all of these conditions are causing her difficulty in caring for herself and in performing her daily routines. *Letter from* [redacted] dated July 21, 2006. The letter states that the applicant's spouse needs the applicant's support during her sickness. *Id.* The AAO notes that the record does not indicate whether the applicant's spouse's dependence on the applicant is permanent or if it is temporary. In addition, there is no explanation given as to how the applicant's spouse manages her daily activities while the applicant is at work. Thus, the current record does not show that the applicant's spouse would suffer extreme hardship as a result of being separated from the applicant.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Pakistan. The applicant made no assertions regarding the possibility of his spouse and children relocating to Pakistan. There is no documentation showing whether the spouse and son would be able to receive health care for their medical problems and how this lack of medical care would cause the applicant's spouse extreme hardship. As there is no documentation or assertions regarding this part of the extreme hardship analysis, the AAO must find that the applicant has not shown that his spouse would suffer extreme hardship upon relocation to Pakistan.

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.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the current record indicates that her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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)(9)(B) 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.