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U.S. Citizenship  
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Services

H4

FILE:

Office: CHICAGO

Date: AUG 29 2006

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section  
212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C.  
§ 1182(a)(2)(A)(i)(I)

ON BEHALF OF APPLICANT:

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 district director denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, Shafiq Mohammad (Mr. Mohammad), is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an individual who has been convicted of a crime involving moral turpitude. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to reside in the United States with his wife, [REDACTED] and their two children, both of whom are U.S. citizens.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, and denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *District Director's Decision*, dated December 27, 2004.

On appeal, counsel for the applicant submits documentation not previously submitted, including a report from a licensed clinical psychologist. Counsel asserts that Ms. [REDACTED] will suffer extreme hardship, psychologically, emotionally and financially, if her husband is not permitted to reside with her and their children in the United States. *Form I-290B*, dated January 27, 2005; *Brief in Support of Appeal*, not dated.

In addition to the above mentioned brief and psychological report, the record includes (1) a hardship statement from Ms. [REDACTED] in which she describes how her life would be destroyed if her husband were denied permission to reside in the United States with her and their children; (2) a letter of support from the applicant's church; (3) a letter of support from Ms. [REDACTED] mother; (4) a billing statement documenting Ms. [REDACTED] student loan debt; (5) a letter from Dr. [REDACTED] who examined Ms. [REDACTED] for heart palpitations; (6) a letter from a chiropractor who examined Ms. [REDACTED] for chronic neck and intrascapular pain; and (7) work evaluations from Ms. [REDACTED] employer. The AAO reviewed the record in its entirety before issuing its decision.

The record reflects that the applicant was convicted of transfer or unauthorized use of food stamps in 1998. As a result of this conviction, the applicant was found to be inadmissible to the United States. Counsel does not contest this finding.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if . . .

(1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver is dependent first, upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse, parent, or child of the applicant. 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 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. In examining whether extreme hardship has been established, 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).

Hardship the applicant himself experiences upon denial of his application for admission is not considered in section 212(h) waiver proceedings. Hardship to his U.S. citizen stepchildren is considered.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she accompanies her husband to live in Pakistan or in the event that she remains 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 first part of the analysis requires the applicant to establish extreme hardship to his wife, in the event that he relocates to Pakistan. In this case, the record reflects that Ms. [REDACTED] was born and raised in the United States. Her parents are U.S. citizens and her entire family lives in the United States. She had a troubled childhood and helped raise her younger brother. She had her first child when she was 16 years old. She was

a single mother and pregnant with her second child when she met the applicant. They married in 1996 and the applicant became the primary father figure in his stepchildren's lives. With the applicant's help, Ms. [REDACTED] went to college and graduated with a bachelor's degree in business administration in 2000. She is now an assistant registrar at the university where she graduated from. Although counsel for the applicant and Ms. [REDACTED] refer to economic, social, and political problems in Pakistan that would make it extremely difficult for the couple to earn a living and raise their children there, the record does not contain evidence on country conditions for Pakistan.

The AAO recognizes that the family would suffer economic detriment and their wage-earning potential would be diminished if they moved to Pakistan, and that the standard of living for the couple and their children would be reduced. If they moved there, they would lose their home, Ms. [REDACTED] would lose her job, and the children would be uprooted from the only life they know.

It is clear that Ms. [REDACTED] has spent her entire life in the United States and has no family in Pakistan or other significant ties in Pakistan. Mr. [REDACTED] two stepchildren were born and raised in the United States. Mr. [REDACTED] has lived in the United States since 1988 and has spent most of his adult life here. If Mr. [REDACTED] was forced to relocate to Pakistan and the family decided to join him there, they would suffer both financial and personal hardships. Ms. [REDACTED] has never been to Pakistan. Her family resides in the United States and would not be available in Pakistan to potentially assist her and her children to adjust to life in a country where they have never lived or even visited. Neither would they be available to help reduce the substantial burden of caring for two children. This lack of support, combined with the diminished family income likely in Pakistan and loss of her job, home, and family and social ties lead to a conclusion that Ms. [REDACTED] would indeed suffer extreme hardship if she chose to move to Pakistan to avoid her and her children's separation from her husband.

The second part of the analysis requires Mr. [REDACTED] to establish extreme hardship to his wife in the event that she remains in the United States separated from the applicant. The psychological report from Dr. [REDACTED] written after five weekly psychotherapy sessions and one family interview, reveals that Ms. [REDACTED] is suffering from Major Depressive Disorder that is "a reactive response to the anticipated separation from either her husband or from her parents and the little brother who has been a son to her." *Psychological Report, supra*. Dr. [REDACTED] concludes that:

[s]ince Ms. [REDACTED] depression is of a reactive, situational nature, it is highly unlikely that either anti-depressant medication or psychotherapy will alleviate the root cause of her problem, since it is based on the possible loss of everything that she holds dear. *Id.*

Included in the record are estimates that show that Ms. [REDACTED] still owes thousands of dollars in student loans and that she is employed full-time as an assistant registrar at a local university. *See Student Loan Billing Statement and Work Evaluation Letter*. Although Ms. [REDACTED] is able to support her family with the income from her job, she is able to work the long hours necessary because her husband helps shoulder the burden of maintaining their home and caring for the children. If he were not allowed to remain in the United States, she would have sole responsibility over these tasks. In order to continue to work at the university, she would need to ensure proper child care and incur the other expenses of running a household for herself and her two

children. The record indicates that these changes would represent an extreme financial burden for Ms. [REDACTED]

Statements and letters of support for the couple indicate the involvement of the applicant and Ms. [REDACTED] in their church; the couple's strong commitment to each other and their children; and an effective partnership of sharing responsibilities in a relationship of over 9 years. See Ms. [REDACTED] *Hardship Statement, supra*; *Letter From [REDACTED]* dated January 21, 2005; *Psychological Report, supra*.

The record shows that the 9-year relationship between Ms. [REDACTED] and her husband is extremely strong and that her emotional and personal well-being is dependent on this relationship. Ms. [REDACTED] clearly articulated that her emotional welfare is dependent on the welfare of her husband and children, and that she could not bear putting her children through the trauma of separation from their stepfather or the trauma of uprooting them from their life in the United States. Her statements and the analysis by a licensed psychologist reveal a high level of anxiety that she is suffering and will suffer if she or her children do not have the companionship and care of their husband and stepfather.

Based on the above evidence, the applicant has established that the cumulative general emotional effect that separation from her husband would have on Ms. [REDACTED] combined with the increased financial, personal and familial burdens that she would face, render the hardship in this case beyond that which is normally experienced in most cases of removal.

Discounting the hardship Ms. [REDACTED] would face in either the United States or Pakistan if her husband were refused admission is not appropriate. Given the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, the AAO finds that the applicant has established that his wife would suffer extreme hardship if his waiver of inadmissibility were denied. In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving that positive factors are not outweighed by adverse factors. See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The AAO must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." See *Matter of Mendez-Morales, supra* at 300 (BIA 1996). (Citations omitted).

The adverse factors in the present case are the applicant's criminal conviction, for which he now seeks a waiver, and years of unauthorized presence.

The favorable and mitigating factors are the extreme hardship to his wife if he were refused admission, his long-term supportive relationship with his wife and two U.S. citizen stepchildren, and his active and positive role in raising his children and in the community, evidenced by letters of support in the record.

The AAO finds that, although the crime committed by the applicant was serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.