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

**PUBLIC COPY**

[REDACTED]

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FILE: [REDACTED] Office: NEWARK, NEW JERSEY Date: MAR 23 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Newark, New Jersey 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 § 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 obtain a benefit under the Act by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. Given that extreme hardship was not established, it was not necessary for the district director to conduct a discretionary analysis of the favorable and unfavorable factors present in this case. On appeal, counsel states that the applicant is not inadmissible, because he did not make a willful misrepresentation of a material fact. In support of this contention, counsel submits copies of affidavits of the applicant and his wife which had been submitted in response to the district director's Notice of Intent to Deny, as well as copies of other documentation already on the record.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen spouse. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant's U.S. citizen children will therefore not be considered in this decision.

In addition to significant amendments made to the Act in 1996, by the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(b)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). Moreover, the Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act. In 1990, section 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act." Moreover, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act (Pub. L. No. 103-322, September 13, 1994) which enhanced the criminal penalties of certain offenses, including "impersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name". See 18 U.S.C. § 1546.

Referring to numerous court decisions that interpreted the term "extreme hardship" for waiver and suspension of deportation purposes, the Board of Immigration Appeals (Board) outlined the following factors it deemed relevant to determining extreme hardship to a qualifying relative in § 212(i) waiver cases:

The factors deemed relevant in determining extreme hardship to a qualifying relative include, but are not limited to, the following: the presence of 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 to such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) at 565-566. (Citations omitted).

In the present case, the record reflects that the applicant is from Pakistan, and his wife is a native of India. The couple has two U.S. citizen children. The applicant is employed as a taxi driver, and his wife, who claims to speak no English, is a housewife. The applicant entered the United States and was admitted as a visitor on August 19, 1990. The record contains a petition for alien relative and application for adjustment of status filed prior to the instant petition, based on the applicant's 1992 marriage to a different U.S. citizen wife. In his affidavit dated September 27, 2003, the applicant explained that he was never married before his current marriage, and he was unaware of the documentation contained in the prior petition.

The applicant wrote that an individual named [REDACTED] and attorney [REDACTED], who was later convicted of fraud and disbarred, prepared paperwork for him and submitted it to the Immigration and Naturalization

Service, now Citizenship and Immigration Services (CIS). The applicant explained that he did not understand English well enough at that time to comprehend the content of his paperwork; he merely signed the papers.

The birth and marriage certificates included in the applicant's first petition and application do not appear to be genuine. The district director noted that the applicant's first birth certificate submitted contains different information from the birth certificate included in the instant application, which creates an unresolved discrepancy in the record. The applicant wrote that he did not procure any of the documents submitted with the prior petition and application, nor was he ever married to the woman who allegedly petitioned for him. The applicant wrote that, due to his ignorance of the content of his previous immigration paperwork, he made no reference to any prior marriage in his current application to adjust status. Counsel maintains that the applicant did not, therefore, knowingly or willfully misrepresent any facts; hence, he is not subject to the grounds for inadmissibility found at § 212(a)(6)(C) of the Act.

Unfortunately, the applicant failed to submit any documentation in support of his contention that he was represented in the previous matter by Sheldon Walker. Since the applicant signed the previously submitted Forms I-130, I-485, and G-325A, it must be presumed that he was aware of the contents of those forms, absent any documentation to the contrary. Given the documentation on the record, it is found that the applicant is subject to the grounds for inadmissibility found at § 212(a)(6)(C) of the Act.

The AAO also notes that on the Form I-601 waiver application, which was prepared with the assistance of a different attorney, in answer to question number 10, the applicant's wife wrote, "My husband Muhammad S. Rauf submitted a political asylum application under a different name." The record contains no evidence that the applicant ever applied for asylum; however, if he did so using a different name, there would be additional grounds for finding that the applicant misrepresented facts in order to obtain a benefit under the Act.

The record does not establish that the applicant's wife would undergo extreme hardship on account of the applicant's inadmissibility. The applicant's wife stated in her affidavit dated September 29, 2003 that she would be unable to support her children without the applicant, as she does not speak English and has never been employed outside the home. She wrote that her brothers, who live in the United States, would be unable to assist her. The record contains no documentation to this effect, however. The record does not establish that the applicant would be unable to contribute to his family's finances while he is in Pakistan, or that the applicant's wife's family is unable to assist her financially. The applicant's wife also wrote that she does not drive; thus, it falls to the applicant to take their eldest son to school every day. There is no evidence that there is no other method of transportation available for this purpose. The applicant has failed to establish that his wife would suffer extreme hardship if she remains in the United States.

The applicant's wife stated that she cannot move to Pakistan, as she does not know anyone there, and she has been living in the United States for 10 years. Nevertheless, while it may be presumed that a move to Pakistan would require numerous adjustments on the part of the applicant's wife, the record contains no evidence to support a claim that she would suffer extreme hardship if she relocates to Pakistan to remain with the applicant. It is noted that the applicant's wife speaks Urdu, a major language in Pakistan, and is Muslim, the official religion of 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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. Moreover, the U.S. Supreme Court 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. 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 waived grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.