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U.S. Citizenship  
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Services

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*HL*

FILE:

[REDACTED]

Office: CLEVELAND, OH

Date: **NOV 14 2005**

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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The District Director, Cleveland, OH denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. 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)(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 entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. 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 U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, January 9, 2002.

On appeal, counsel contends that it would be an extreme hardship to the applicant's wife and children if he were removed from the United States. Counsel contends that the permanent separation of Mr. Makhani from his spouse and her children and the economic impact that such separation would cause would result in extreme hardship to the family. Also, the applicant is a father figure who has a daily role and close relationship with the children. Further, counsel contends that if the applicant's wife and her children moved to Pakistan, they would need to adjust to different customs and lifestyle. They would be deprived of educational and economic opportunities and health services benefits. Finally, counsel contends that Pakistan is unstable and the applicant's wife and her children would be in inherent danger and forced to live in fear.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

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 applicant was admitted to the United States at Chicago, Illinois in August 1994 after presenting a passport that was not lawfully issued to him. He is therefore inadmissible under section 212(a)(6)(C). The record also indicates that the applicant submitted his own passport during his adjustment of status interview and that passport has an unexplained stamp indicating admission in Los Angeles, CA on April 15, 1998. Since the applicant is inadmissible due to the misrepresentation that occurred in August 1994, the passport

admission stamp has no effect on these proceedings. Therefore, the AAO will not address the unexplained passport admission stamp.

Counsel, on appeal, attempts to factually distinguish the applicant's circumstances from those in several cases discussed by the district director in the denial of the waiver application. Significant portions of counsel's contentions concern the effect that the applicant's removal would have on the children of the applicant's spouse. Section 212(i) of the Act clearly states that a waiver is to be issued only if "refusal of admission to the United States [of the applicant] would result in extreme hardship to the citizen or lawfully resident *spouse or parent* of such an alien." (*Emphasis added*). Therefore, the AAO will only consider the effect on the children as that relates to the applicant's spouse. The record does not indicate that the applicant has a U.S. citizen or lawfully resident parent, therefore the waiver application will be approved only if the applicant can demonstrate that his U.S. citizen spouse would suffer extreme hardship if he is removed.

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.

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny." *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9<sup>th</sup> Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3<sup>rd</sup> Cir. 1979). However, U.S. court decisions have also held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship.

The record indicates that the applicant and his wife were married on April 25, 2001. There is no indication that the applicant's spouse suffers from any disabilities that would make it impossible or difficult for her to remain employed or to continue to care for her children. She receives child support from her previous husbands that totaled \$18,900.00 per year in 2001. She was employed and earning an annual salary of \$14,458.80 in 2001. Although the applicant's departure from the United States means that the family would no longer enjoy the applicant's income in the United States (about 20,000.00 in 2001), the remaining family income, including child support, would have been over \$33,000.00 in 2001. The loss of the applicant's income, even if he could not provide the family with any money from Pakistan, would create a more difficult financial situation but not one that is beyond the ordinary. There is no evidence to suggest that the applicant's

wife was unable to support herself and her children in the period after her divorce and before her marriage to the applicant.

There are factors that indicate the applicant's spouse would experience considerable difficulties if she were to join her husband in Pakistan, including the instability of the country, cultural differences in the way that women are treated, loss of educational opportunities and medical care available in the United States and the effect on court ordered custody and child support agreements resulting from her divorces from the fathers of her children. However, there is no legal requirement that the applicant's spouse, who is a United States citizen, must abandon her residence in the United States. The applicant's spouse submitted a letter and an affidavit indicating the positive effect that the applicant has had on her and her children and the difficult emotional situation that would be caused if they were separated by his removal. It is acknowledged that separation from one's spouse is difficult. However, nothing in the affidavit or letter, or in the entire record, describes a situation that is unusual or beyond that which would normally be expected as the common result of removal. There is no indication of unusual psychological trauma and there are no exceptional physical, emotional, financial or other circumstances indicated that would cause the applicant's spouse extreme hardship if she remained in the United States after the applicant is removed.

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 wife 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. Thus, the AAO finds it unnecessary to determine whether the acting district director erred in his analysis of the favorable and unfavorable discretionary factors in the applicant's case.

In proceedings for application for waiver of grounds of inadmissibility under section 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.