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FILE:

Office: ATLANTA, GA

Date: AUG 15 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, GA, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States (U.S.) 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 procured admission into the United States by fraud or willful misrepresentation in October 1990. 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 her spouse and child.

The district director concluded that the applicant did not provide sufficient evidence to establish that her spouse would suffer extreme hardship as a result of her removal. The application was denied accordingly. *Decision of the District Director*, dated November 5, 2003.

On appeal, the applicant's spouse submits new evidence in regards to his health and asserts that he would suffer extreme hardship as a result of the applicant's removal from the United States. *Affidavit from the applicant's spouse*, dated December 3, 2003.

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 indicates that in October 1990 the applicant entered the United States by presenting a non-immigrant visa that did not belong to her. Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 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. Hardship the alien herself experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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 spouse or parent in 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. 22 I&N Dec. at 565-566.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Pakistan or in the event that he resides in the United States, as he 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 applicant's spouse states in his affidavit that in July 2003 he was diagnosed with a rare form of cancer that required immediate radiation treatment and aggressive chemotherapy. The chemotherapy successfully slowed down the spread of the tumor, but the applicant's spouse still requires constant medical supervision. He has been advised by his doctor to avoid strenuous activities and to get plenty of rest. This medical condition has restricted him from managing his three businesses and the applicant has taken over all management responsibilities for these businesses. The applicant's spouse states that he cannot relocate to Pakistan with the applicant because he would not be able to receive the level of medical care that he receives in the United States. He also states that if he moved to Pakistan he would have to sell his three businesses causing extreme financial hardship to his family. *Spouse's Statement*, dated December 3, 2003.

The applicant's spouse states that if the applicant is removed from the United States he will suffer extreme hardship because he relies on the applicant to help him with everyday activities; to care for their son; to help care for his elderly and sick mother; and to manage their businesses.

In support of his assertions the applicant's spouse submitted a letter from his doctor, which certifies that the he has been under the doctor's care for the past three years and that in July 2003 the spouse was diagnosed with Nasopharyngeal Carcinoma (a rare cancer) that has spread to his lymph nodes. At the time of diagnosis the cancer was in its third stage and the applicant's spouse underwent aggressive chemotherapy for four months. The doctor also states that the applicant's spouse will have to remain under constant treatment and observation in the United States as this cancer can be life-threatening. *Letter from [REDACTED]* dated November 25, 2003. The applicant's spouse also submitted a letter from his mother's doctor stating that she suffers from diabetes and severe anxiety attacks and cannot take care of herself. *Letter from [REDACTED]* *Shakoor*, dated November 20, 2003. In support of his assertions regarding his three businesses, the applicant's spouse submitted certificates of incorporation for all three businesses, quarterly tax returns for the three businesses and corporate resolutions appointing the applicant as the primary business manager of all three businesses. The AAO finds that taking into consideration the seriousness of the applicant's spouse's illness and the spouse's reliance on the applicant physically and financially, the applicant has established that her spouse would suffer extreme hardship as a result of the her removal from the United States.

A review of the documentation in the record establishes the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. However, the grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the

discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's spouse, the applicant's U.S. citizen child, the absence of any criminal record, the passage of over 15 years since the applicant's immigration violation and the fact that the applicant was only 21 years old at the time of this violation. The unfavorable factor in this matter is the applicant's willful misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States. The AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the waiver application is approved.