

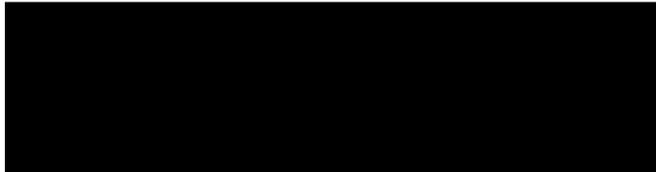
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U.S. Citizenship  
and Immigration  
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FILE:



Office: HONG KONG

Date:

JUN 05 2007

IN RE:

Applicant:



APPLICATION:

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

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 waiver application was denied by the Officer-in-Charge (OIC), Hong Kong, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant [REDACTED] is a native and citizen of Pakistan. He was found to be inadmissible to the United States under sections 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), and 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i)(II), of the Immigration and Nationality Act (the Act). The applicant is the spouse of a U.S. citizen and father of a U.S. citizen son (born on September 21, 2002) He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The OIC concluded that the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated July 20, 2005. It is noted that the applicant previously submitted a waiver application, signed on July 27, 2003, which had been denied by the OIC. The AAO had dismissed an appeal of that denial on February 17, 2005.

The AAO will first address in this decision the director's finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

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

- (1) Criminal and related grounds. —
  - (A) Conviction of certain crimes. —
    - (i) In general. — Except as provided in clause (ii), any 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, or
      - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

The applicant has three convictions that occurred in Hong Kong. His convictions for blackmail (1993) and wounding (2003), which render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, are waivable under section 212(h)(1) of the Act. His drug conviction (2000) for possession of one hand-rolled cigarette containing 0.06 grams of cannabis resin renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act; however, his offense is eligible for a waiver under section 212(h)(1) of the Act as a single offense involving simple possession of less than 30 grams of marijuana.

Counsel makes the following assertions on appeal. The applicant, who resides in Hong Kong, has a two-year-old son who is growing up in the United States without a father. His child and wife do not speak Urdu or Chinese fluently, the languages of Pakistan and Hong Kong, and has no legal status in those countries. His wife has lived in the United States for many years; she has no family ties to Hong Kong or Pakistan. All her

family is in the United States. His wife has no profession or skill or prior work experience if she goes to Pakistan. The [REDACTED] family has no property in Pakistan. The political and economic conditions in Pakistan are constantly deteriorating. If the family relocated to Hong Kong, it would have no legal status, the child would have no educational opportunities, limited health care, and reduced life prospects. The applicant has no alternative prospects for obtaining status in the United States. The applicant wishes for his child to remain in the United States. The applicant has established the extreme hardship requirement based on the totality of the circumstances, especially the need for family unity. According to *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), family separation may be the single most important hardship factor. *I.N.S. v. Errico*, 385 U.S. 214 (1966) indicates that the grounds of eligibility for a waiver must be construed in favor of the alien. The cases of *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), and *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978) describe hardship factors. Cases such as *Salcido, supra*; *Contreras-Buenfil v. I.N.S.*, 712 F.2d 401, 403 (9th Cir. 1983); *Mejia-Carrillo v. I.N.S.*, 656 F.2d 520 (9th Cir. 1981); *Cerrillo-Perez v. I.N.S.*, 809 F.2d 1419, 1422 (9th Cir. 1987); *Gutierrez-Centeno v. I.N.S.*, 99 F.3d 1529, 1533 (9th Cir. 1996); *Casem v. I.N.S.*, 8 F.3d 700 (9th Cir. 1993); *I.N.S. v. Errico*, 385 U.S. 214, 225 (1966); *Moore v. City of Cleveland*, 431 U.S. 494, 503 (1977); *Urbano de Malaluan v. I.N.S.*, 577 F.2d 589 (9th Cir. 1983); *Ramos v. I.N.S.*, 695 F.2d 181 (5th Cir. 1983); *Batsidas v. I.N.S.*, 609 F.2d 101 (3rd Cir. 1979); and *Ravancho v. I.N.S.*, 658 F.2d 169, 175 (3rd Cir. 1981), indicate that family separation and hardship to a U.S. citizen child may be sufficient to warrant relief. Courts that have held that all factors must be weighed together include: *Prapavat v. I.N.S.*, 662 F.2d 561 (9th Cir.); *Villena v. I.N.S.*, 622 F.2d 1352, 1357 (9th Cir. 1980); *Jong Shik Choe v. I.N.S.*, 597 F.2d 168, 170 (9th Cir. 1979); and *In Re L-O-G*, 21 I&N Dec. 413, 418 (BIA 1996). The *Prapavat* court also stated that “the existence of a citizen child, an undeveloped country that offers minimal opportunities for suitable employment, the child’s lack of knowledge of that country. . . and economic loss must all be assessed in combination.” *In Re L-O-G, supra*, at 418 (BIA 1996), the BIA stated that “a restrictive view of extreme hardship is not mandated by the Supreme Court or by our published law.” *Banks vs. INS*, 594 F.2d 760 (9th Cir. 1979) indicates that a respondent returning to a less developed or a particularly impoverished country is more likely to demonstrate extreme hardship.

Counsel asserts that the applicant has established extreme hardship to his qualifying relatives, which are his wife and son.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) of this section and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if – . . . in the case of an immigrant who is 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 of the bar to admission resulting from violation of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(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, parent, son, or daughter of the applicant. Hardship to the applicant is not relevant and will be considered only to the extent that it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an

exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that are relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 564. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to the applicant’s wife and son. It is noted that extreme hardship to the applicant’s wife and their son must be established in the event that they join the applicant; and in the alternative, that they remain in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The applicant’s affidavit states the following. He married his wife in 2001. They have a son who is almost three years old. He missed the first years of his marriage and the infant years of his baby. He is the cause of his problems. He has turned his life around and wants to be with his family. Besides the physical separation, there is emotional and psychological hardship, and financial hardship as his wife and her family have had to support him from time to time. His wife and son have stayed with him in Hong Kong, and in the future in Pakistan. His wife has no life in Hong Kong or Pakistan: all of her family is in the United States. He has never been sentenced to jail for my offenses, they were wrong and I am truly sorry. *Affidavit of the Applicant, dated July 7, 2005.*

In her affidavit, [REDACTED] makes the following statements. She has lived in the United States for more than 10 years. All of her family, her mother, father, and siblings, have legal status to live in the United States. Her two-year-old son has been forced to live either in the United States without a father or to give up his life in America to be with his father. The only option (since the child has health problems) is to live extended periods of time in the United States without seeing his father and then taking a very long and arduous flight to the Far East to spend a couple of months with his father. This is causing extreme emotional, psychological, physical, and financial hardship on them, the marriage, and the child. Financially, she has two choices: make ends meet without her husband by having someone care for her infant son while she works; or relocate with

her son to Hong Kong where her husband's earnings allow for no more than a very low standard of living with no ready access to free or low cost health and child care as in the United States and with no family support to lessen her burdens. Her husband's minor offenses, for which he never did jail time, deserve a pardon. *Affidavit of [REDACTED] dated April 1, 2005.*

The letter from [REDACTED]'s parents states the following. Their son-in-law has minor criminal charges that did not warrant prison time. Everyone has suffered, especially the child who has spent many months without his father while staying in America. When he went to Hong Kong, for many weeks he did not accept his father or paternal grandparents. These sudden variations in his settings can have long-term negative consequences. Our daughter's family has suffered. Their lives are on a permanent pause, and the only way for everything to return to normalcy is for the family to unite in the United States. Otherwise, the child will be in a constant state of irregularity, away from America and in a country that can leave him ill-prepared for life in American in terms of culture and language. Our daughter is living a life of captivity, forced to reside in Hong Kong, away from her family and the opportunities that only American can offer. Our son-in-law has suffered the most, bearing the responsibility for all the pain that this situation has brought upon us. *Letter from the Applicant's In-laws, dated March 25, 2005.*

The March 24, 2005 letter from [REDACTED], states that the applicant's father-in-law has been coming to the [REDACTED] [REDACTED] is residing in Hong Kong with her husband, but this was not intended. The family's assumption was that after marriage the husband would be able to migrate to the United States and the entire family could live together. This unexpected overseas stay and unwanted distance has caused suffering to the entire family.

The record contains medical records of the applicant's son that relate to an injury to his right arm caused by a fall.

The record also contains the documentation pertaining to the Form I-601 previously submitted by the applicant.

U. S. courts have considered family separation as one of the most important hardship factors. *See, e.g., Batsidas v. I.N.S.*, 609 F.2d 101, 105 (3<sup>rd</sup> Cir. 1979) (The family and relationships between family members occupy a place of central importance in our nation's history and are a fundamental part of the values which underlie our society); *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (the most important single hardship factor may be the separation of the alien from family living in the United States); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship); and *Ramos v. INS*, 695 F.2d 181, 186 (5<sup>th</sup> Cir. 1983) (The relevance of close family ties seems implicit in the statutory provision that the "extreme hardship" requirement may be met by showing such hardship to the citizen or legal resident spouse, parent, or child of the alien)

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

With the situation here, the applicant's in-laws state that their grandson has had a difficult time accepting his father due to prolonged and geographically extensive separations from him. The AAO finds that the applicant's wife and son will undoubtedly experience emotional hardship if separated from the applicant. The AAO is mindful of and sympathetic to the emotional hardship that results from separation from a loved one. Nevertheless, the AAO finds that [REDACTED] and her son's situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Separation from the applicant is a common result of deportation and is insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See, e.g. Hassan v. INS, supra, and Perez, supra.*

The applicant must also establish extreme hardship to his wife and son in the event that they join him overseas. The record here is not persuasive in establishing that the applicant's wife and son would endure extreme hardship if they joined him in Hong Kong, where he currently resides.

The applicant states that his wife's family has had to support him occasionally. His wife indicates that there is no ready access to free or low cost health and child care in Hong Kong and her husband's earnings provide a very low standard of living there. The record contains no supporting evidence to substantiate the assertions of the applicant and his wife. There is no documentation of the family's household expenses in Hong Kong and [REDACTED] income. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, although economic hardship endured by the applicant's wife and son is relevant in determining whether extreme economic hardship exists, such hardship alone is insufficient to constitute extreme hardship under the Act. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981)(U.S. Supreme Court found that economic detriment alone is insufficient to establish extreme hardship).

There is no evidence in the record about the economic, social, and political conditions in Hong Kong and Pakistan. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien's qualifying relatives. *Matter of Anderson*, 16 I & N Dec. 596 (BIA 1978). There is no evidence that shows that the applicant and his wife would be unable to earn a living wage in Hong Kong. No evidence reflects that the applicant has any physical or mental impairment which would restrict his employment or limit the type of employment he could perform in Hong Kong or Pakistan. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

The contention of [REDACTED] parents that their grandson will be ill-prepared for life in American in terms of culture and language if he does not live in America is unsupported by any evidence. No evidence suggests that the applicant's wife and son would not be able to adjust to life in Hong Kong or describes the culture and languages commonly spoken in Hong Kong or the educational hardship to the applicant's four-year-old son who is not yet of school age. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

The fact that economic and educational opportunities for the child are better in the United States than in the alien's homeland does not establish extreme hardship. *See Matter of Kim*, 15 I & N Dec. 88 (BIA 1974); *see also Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986) (stating that the disadvantage of reduced educational opportunities is insufficient to constitute extreme hardship) and *Perez v. INS*, 96 F. 3d 390, 392 (9<sup>th</sup> Cir. 1996) (The hardships faced by their citizen child with regard to adjusting to a new language, culture and educational environment are what would normally be expected with any child accompanying a deported alien to a foreign country).

No evidence in the record reflects that the applicant's wife or son has a significant condition of health and that suitable medical care is not available in Hong Kong. The fact that medical facilities in the alien's homeland may not be as good as they are in this country does not establish extreme hardship to the child. *Matter of Correa*, 19 I & N Dec. 130 (BIA 1984).

██████████ and her son are separated from her father, mother, and siblings while in Hong Kong. The court in *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) stated that severance of ties does not constitute extreme hardship. In *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996), the BIA stated that separation from a family member does not constitute extreme hardship. Emotional hardship caused by severing family and community ties is a common result of deportation. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985).

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship to the applicant's son and wife if they remain in the United States without the applicant; and in the alternative, if they join the applicant overseas. Having carefully considered each of the hardship factors, both individually and in the aggregate, it is concluded that the factors in this case do not constitute extreme hardship to a qualifying family member for purposes of relief under 212(h) of the Act.

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 waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.