



U.S. Citizenship
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FILE:

[REDACTED]

Office: BALTIMORE, MD

Date:

DEC 10 2008

IN RE:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, 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, [REDACTED] is a native and citizen of Pakistan who was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for committing a crime of moral turpitude. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated May 18, 2006.

The AAO will first address the finding of inadmissibility

Section 212(a)(2) of the Act states that:

(A)(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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The record reflects that the applicant plead guilty to and was found guilty of theft (\$300 plus value) in the District Court of Maryland on January 25, 2001. For his theft conviction, the District Court of Maryland’s records show that [REDACTED] was sentenced to a suspended 364-day term of incarceration as well as 365 days of probation, and was ordered to pay a criminal fine. Because theft is found to involve moral turpitude, *Hashish v. Gonzales*, 442 F.3d 572, 576-77 (7th Cir. 2006), the district director was correct in finding the applicant inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i).

The AAO will now consider whether granting a section 212(h) waiver is warranted.

The applicant is eligible to apply for a section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act, which is dependent upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The applicant's qualifying relatives are his lawful permanent resident spouse and his two U.S. citizen children. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See 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, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers 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 565-566. 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 evidence in support of the waiver application includes the following:

- A psychological evaluation of the applicant's daughter by [REDACTED], Ph.D., dated June 13, 2006. [REDACTED] conveys that [REDACTED] has been in the United States for 13 years and his wife for 15 years. [REDACTED] owns a restaurant and a convenience store and won a National Squash Tournament in the United States. [REDACTED] conveys that protracted separation of [REDACTED] from his daughter would disrupt her functioning and emotional adjustment. [REDACTED] states that separation might cause [REDACTED] to decompensate and to lose their home and business.
- The letter dated May 30, 2006, by [REDACTED], a counselor with Marley Elementary School, conveys that [REDACTED]'s children attend school there, his daughter is in pre-

kindergarten and his son, Umar, is in the first grade. states that the children would suffer the loss of their father if he returned to Pakistan.

- The income tax records for 2005 reflect H&J Enterprises, Inc., a convenience store, had total income of \$64,523 and deductions of \$65,907; and a delivery business had income of \$81,683 and expenses of \$78,676. The 2005 individual income tax records of the applicant and his wife show income of \$20,642.
- The birth certificates of the applicant's children reflect his son was born on September 14, 1999, and his daughter on November 30, 2000.
- The affidavit by the applicant describes the crime of which he was convicted, his remorse, and how his children's lives would be destroyed if he left the United States. He states that he has no means of supporting his children in Pakistan and his family members in Pakistan are his parents and a brother and sister.
- In her affidavit, the applicant's wife states that she has an employment-based adjustment of status application pending, of which her husband is a derivative. She describes her family ties to the United States and states that her son, who is enrolled in elementary school, never traveled outside the United States and is Americanized. She states that her son understands some of the Urdu language, but does not speak or read it. She indicates that while she works her children are cared for by her naturalized citizen mother. The applicant's wife describes the close relationship she and her daughter have with the applicant. She states that her husband is self-employed in the courier business and earns enough to support their family; after covering expenses, she indicates they gross over \$5,000 monthly. The applicant's wife states that they will have no reasonable business prospects or chance of employment in Pakistan and will live a marginal existence, and she explains why her family left Pakistan. She states that her husband's parents in Pakistan depend upon them for financial support. The applicant's wife indicates that she is employed at Station Amoco and is paid \$23,000 annually.
- Collectively, the letters in the record by the applicant's in-laws convey that the applicant has a close relationship with his family and that he holds a master's of business administration degree from Punjab University.
- The World Development Indicators database of the World Bank for September 2004 shows that out of 206 countries, Pakistan ranks as 166, having \$470 in gross national income (GPI) per capita in 2003, and as 159 for purchasing power parity. The document entitled "Cancellation of Removal (Extreme Hardship)" by pards.org shows Pakistan as ranking at 32, out of 175 countries, in which greatest hardship is ranked as number 1.
- The document by EUI online store provides a hardship ranking.
- The World Factbook conveys information about Pakistan for the year 2004.

On appeal, counsel states that the submitted documentation establishes extreme hardship to the applicant's lawful permanent resident spouse and to his two U.S. citizen children.

In rendering this decision, the AAO has carefully considered the documentation in the record.

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's qualifying relatives must be established in the event that the qualifying relative joins the applicant, and alternatively, that he or she remains in the United States without the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

With regard to hardship imposed on the applicant's children if they joined their father to live in Pakistan, administrative and judicial decisions which have held that the consequences of deportation such as language capabilities and cultural differences imposed on children of school age must be assessed in determining extreme hardship. In *Matter of Kao & Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA held that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to transition to life in Taiwan; she had lived her entire life in the United States, was completely integrated into an American lifestyle, and uprooting her at this stage in her education and her social development would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the court indicated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. Lastly, in *Prapavat v. I.N.S.*, 638 F. 2nd 87, 89 (9th Cir. 1980) the court found the BIA abused its discretion in holding that extreme hardship had not been shown in light of the fact that the aliens' five-year-old citizen daughter, who was attending school, would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

In light of the aforementioned decisions and the fact that the applicant's nine-year-old son and seven-year-old daughter have always lived in the United States and have a minimal understanding of the Urdu language, the AAO finds that they would experience extreme hardship if they were to join their father to live in Pakistan.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *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.") (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. However, after a careful and thoughtful consideration of the record, the AAO finds that the situation of the applicant's wife and children, if they remain in the United States without him, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant's wife and children, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

The applicant's wife conveys that in 2005 she earned a gross annual income of \$23,000 and that her husband earns enough to support their family. However, because the record does not contain documentation of the expenses of the applicant's family, the AAO cannot determine whether the income of the applicant's wife is insufficient to meet those expenses. Going on record without supporting documentary evidence is not sufficient for purposes 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).

In conclusion, the AAO finds that the applicant established extreme hardship to his children if they were to live with him in Pakistan; however, he failed to establish extreme hardship to a qualifying family member in the event he or she was to remain in the United States without him.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.