

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

tlr

PUBLIC COPY

[REDACTED]

FILE: [REDACTED] Office: MIAMI, FL

Date: **JUL 18 2008**

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decision of the AAO affirmed. The application is denied

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States 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 on October 22, 2005. The applicant is married to a U.S. citizen, has two U.S. citizen children and lawful permanent resident parents. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to reside in the United States with her family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative as a result of her inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated September 14, 2000.

On appeal, counsel asserted that the district director's decision was arbitrary and capricious because it failed to consider all of the factors in accordance with the Supreme Court's decision in *INS v. Yueh-Shaio Yang*, 519 U.S. 26, 117 S. Ct. 350 (1996). Counsel also indicated that he would be submitting a brief and/or evidence to the AAO. *Form I-290B*, dated October 12, 2000.

On appeal, the AAO found that the record did not contain any evidence that the applicant's spouse would suffer extreme hardship if the applicant were not allowed to remain in the United States and dismissed the appeal. *Decision of the AAO*, dated July 25, 2002.

In his motion to reopen, counsel submits evidence of hardship to the applicant's spouse, parents and children. *Motion to Reopen and Reconsider*, dated August 19, 2002.

The record indicates that on October 22, 1995, the applicant presented a Pakistani passport and visitor's visa with the name Sadaf Parveen and the date of birth, November 3, 1981, to gain entry into the United States.

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 section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien or her children would experience due to separation is not considered in section 212(i) waiver proceedings unless it would cause hardship to the applicant's spouse and/or parent. 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).

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 applicant 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The AAO notes that extreme hardship to the applicant's spouse and/or parents must be established in the event that they reside in Pakistan and in the event that they reside in the United States, as they are 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.

Counsel states that the applicant's spouse has lived in the United States for the past thirteen years and has no more ties to Pakistan. *Counsel's Brief*, August 19, 2002. Counsel also states that the applicant's spouse's immediate and extended family resides in the United States and he is employed as a pharmacist. He states that returning to Pakistan would force the applicant's spouse to abandon his sick father, a U.S. citizen, who lives with the applicant and her spouse. In addition, counsel emphasizes the concern over country conditions in Pakistan. *Id.* He submits a State Department Travel Warning, dated August 12, 2002. This warning states that there have been various terrorist attacks on Christian and U.S. facilities. The warning expresses ongoing

concern for further terrorist actions against American citizens.¹ Counsel also submits three newspaper articles from 1995, published in “The Daily Qaumi Akhbar Karachi.” The AAO notes that these articles report violence against certain groups in and around Karachi; but are of less weight in determining hardship in the applicant’s case because they were published over ten years ago. Counsel also submits affidavits from the applicant’s sister and a family friend. The applicant’s sister states that her family is [REDACTED] and were persecuted as a migrant group by the majority Punjabi and Balochi communities. *Sister’s Affidavit*, dated December 21, 2000. She states that her family received death threats after a Balochi revolt and then fled to the United States. She also states that if the applicant were removed to Pakistan her life would be in danger because of her status as a Hansoti Biradi. *Id.* Mr. [REDACTED] states that he is personally aware of death threats received by the applicant’s father when he lived in Pakistan and that the applicant’s family would be in danger if they returned to Pakistan. *Affidavit from Mr. [REDACTED]* dated December 21, 2000. Based on the Department of State travel warnings and the statements submitted by the applicant, the AAO finds that the record reflects that the applicant’s spouse would suffer extreme hardship upon relocation to Pakistan.

Counsel states that the applicant’s spouse cannot remain in the United States with his children, but without the applicant because his work schedule prohibits him from being able to attend to the needs of his children and his elderly, sick father. *Counsel’s Brief*, August 19, 2002. The applicant’s spouse states that he works long and irregular hours and would be unable to care for his children himself. *Spouse’s Statement*, dated December 12, 2000. The spouse also states that his father suffers from a heart ailment and asthma and relies on the applicant’s spouse to constantly look after him. The applicant’s spouse asserts that he relies on the applicant for his meals and household chores. He explains that although their extended families all reside in the United States, they do not reside in or near the Jacksonville, Florida area where they reside. *Id.*

Counsel states that if the applicant returns to Pakistan with their two children, the applicant’s spouse will suffer extreme hardship because he will lose the ability to see his children grow up and he will constantly fear for their well-being in Pakistan. *Counsel’s Brief*, August 19, 2002. The applicant’s spouse states that he would suffer greatly if the applicant returned to Pakistan with their children because he would not be able to see his children and he would have to financially support two residences, his in the United States and that of his wife and children in Pakistan. Finally, the applicant’s spouse expresses concern that his wife and children would be subject to persecution and in danger of physical harm upon their return to Pakistan because of their membership in the Hansoti Biradi migrant group and the applicant being a single, working mother with no family and no home. *Spouse’s Statement*, dated December 12, 2000. The record also contains a letter from the applicant’s child’s pediatrician, Dr. [REDACTED]. Dr. [REDACTED] states that the applicant’s son has been a patient of his since 1997 and that he is on daily preventative treatment for asthma. *Letter from [REDACTED]*, dated August 22, 2002. The doctor states that he believes that moving to Pakistan, a more polluted area with dust and other trigger factors with no access to treatment, would put the applicant’s son at a greater risk for acute asthma attacks. *Id.*

¹ The AAO notes that the Department of State continues to warn U.S. citizens against travel to Pakistan. *See Department of State Travel Warning*, dated September 21, 2007 and current as of May 21, 2008.

The AAO finds that the assertions made by counsel and by the applicant's spouse are not supported by the record. No documentation was submitted to establish the applicant's spouse's work schedule or country conditions in Pakistan as they relate to the Hansoti Biradi migrant group. Counsel failed to submit more recent country condition information to support the information submitted from 1995. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the financial burdens that the applicant's spouse may experience upon the applicant's removal from the United States are common in families experiencing the removal of a family member and do not rise to the level of extreme hardship.

The record also includes psychological reports for the applicant's spouse, father, mother and two children. Dr. [REDACTED] conducted an interview with the applicant's spouse on August 16, 2002. *Spouse's Psychological Evaluation*, dated August 20, 2002. Based on this interview, he found that the applicant's spouse would suffer extreme hardship as a result of the applicant's removal from Pakistan because he would: 1) be deprived of his marital union, resulting in a loss akin to the death of a loved one; 2) suffer mental anguish as a result of his awareness of the dangers and persecution facing the applicant in Pakistan; 3) suffer financial hardship as a result of the added cost of care for his children and father; and 4) be burdened with the emotional needs of his children. Dr. [REDACTED] also diagnoses the applicant's spouse with Adjustment Disorder with Mixed Anxiety and Depression, which he feels could be exacerbated by the removal of the applicant's spouse and become major depressive disorder. *Id.* Dr. [REDACTED] interviewed the applicant's father on August 18, 2002. Dr. [REDACTED] states that the applicant's father has a history of acute depression of marked severity and suffers from chronic anxiety, insomnia, erratic appetite and total anhedonia. *Father's Psychological Evaluation*, dated August 23, 2002. The evaluation states that the applicant's father fears her return to Pakistan because of the persecution she may face and is taking an anti-depressant for his symptoms. Dr. [REDACTED] states that the applicant's father is to be seen for individual psychotherapy and medication at least once a week. *Id.* The applicant's mother was also interviewed by Dr. [REDACTED]. Her interview took place on August 8, 2002. Dr. [REDACTED] states that the applicant's mother has a history of chronic depression, which has been exacerbated by her daughter's situation. He states that she has been advised not to take anti-depressants because of her numerous other medications. Dr. [REDACTED] states that the applicant's mother is totally dependant on her husband and her children and states that she feels sad all the time and has a poor appetite with erratic sleep. He recommends that she come to his office once a week for medication management and psychotherapy. *Id.*

Although the input of any mental health professional is respected and valuable, the submitted report is based on one interview with the applicant's spouse and parents. Accordingly, the conclusions reached in the report do not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional and are of diminished value to a determination of extreme hardship. The AAO notes that the record also contains Dr. [REDACTED]'s psychological evaluations of the applicant's children and observes that the applicant's children are not qualifying relatives for the purposes of this proceeding. While Dr. [REDACTED]'s evaluation of the applicant's spouse states that the emotional needs of his children and the care

they would require if separated from their mother would present an additional extreme hardship for him, the evaluation fails to identify or describe the impacts that the children's suffering would have on their father. Moreover, as previously noted, being based on a single interview, Dr. [REDACTED]'s findings concerning the applicant's spouse are of limited value in this proceeding.

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 (9th 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 (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. *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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decision will be affirmed.

ORDER: The prior decision of the AAO is affirmed. The application is denied.