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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 24 2008

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 sought to procure an immigration benefit by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

The service center director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) relied on irrelevant and improper grounds in denying the waiver. Counsel further asserts that the evidence in the case, including additional documentation submitted with the appeal, supports a finding of extreme hardship to the applicant’s wife should the applicant be deported to Pakistan. Specifically, counsel maintains that the potential harm and economic hardship the applicant’s wife and family would suffer if they relocated to Pakistan with the applicant would amount to extreme hardship.

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:

- (1) The [Secretary] may, in the discretion of the [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 [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 AAO notes that the record contains several references to the hardship that the applicant’s children would suffer if their father were deported to Pakistan. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

Counsel relies upon *Delmundo v. INS*, 43 F.3d 436 (9th Cir. 1994) to support an assertion that hardship to the applicant’s children must be considered in assessing extreme hardship. The court in that case did not hold,

however, that hardship to children or other family members must be considered in determining whether a qualifying relative for a 212(i) waiver would suffer extreme hardship. Rather, the court held that the BIA erred in denying a motion to reopen because, in determining whether the applicant would merit the underlying relief as a matter of discretion, it failed to consider hardship to the children. In the present case, the waiver was not denied as a matter of discretion, but because it was determined the applicant had not met the statutory requirement of establishing extreme hardship to the only qualifying relative, his spouse. The applicant must first demonstrate statutory eligibility for this relief by showing extreme hardship to a qualifying relative before the discretionary factors can be addressed. Counsel also refers to *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Comm. 1979) in support of the contention that hardship to the children must be considered. The holding in that case does not apply to the present one because it addressed a waiver under section 212(i) of the Act before it was amended by section 349 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IRIRA). The amendment, which went into effect on September 30, 1996, added the requirement that an alien seeking a waiver of section 212(a)(6)(C)(i) of the Act must show that being denied admission will result in extreme hardship to his or her U.S. citizen or permanent resident alien spouse or parent.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel states that CIS based the decision to deny the waiver application on an erroneous interpretation of case law. Specifically, counsel asserts that CIS erroneously relied on *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), to support a finding that any hardship the applicant's wife would suffer if she relocated to Pakistan would be the result of her personal choice to accompany the applicant. Counsel further contends that the director improperly relied on *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), to support a conclusion that there is no law that would require her to depart the United States with her husband. Counsel asserts that the

court in *Shoostary v. INS* did not state this, but did consider the danger to a qualifying relative that would result from relocating with the waiver applicant.

Counsel states that there are several factors that, when considered in the aggregate, would amount to extreme hardship to the applicant's wife if he were deported. These include the existence of lawful permanent resident or U.S. Citizen ties to the United States, the qualifying relative's lack of family ties outside the United States, conditions in Pakistan, and the financial impact of departure from the United States. As evidence in support of the waiver application, counsel has submitted reports on conditions in Pakistan, including a U.S. State Department Travel Warning and the 2005 International Religious Freedom Report, as well as a report from a psychologist who evaluated the applicant's wife and children. The I-601 application also included a letter from the applicant's wife and a statement from the applicant concerning the hardship the family would suffer if he were deported.

The record reflects that the applicant has resided in the United States since 1978. He married his wife in Goa, India in 1982 and they have a son and daughter, twins, who are now sixteen years old. The applicant has worked for the United Nations since 1978 as a finance associate and later as a portfolio/ operations manager and his wife is a physician who has worked in the United States since 1986. The family is Catholic and documents submitted with the appeal indicate they attend a Catholic church in Ossining, New York. According to a psychological evaluation of the family, the children are good students with plans to attend Ivy League universities who also participate in extracurricular activities and perform community service. *See Report of [REDACTED], dated March 30, 2006, Exhibit D.*

The record further reflects that the applicant previously resided in the United States from 1971 to 1974. In 1973 he married a U.S. Citizen who submitted an immigrant petition for him. On October 17, 1974, the applicant appeared at his adjustment of status interview with an imposter because he could not locate his wife, who he claims had abandoned him. His petition for alien relative was denied on the basis that the marriage was a "sham marriage entered into solely to gain an immigration benefit for the beneficiary and to circumvent the immigration laws of the United States." *See Form I-292, Decision of District Director revoking approved visa petition, November 5, 1974.* The applicant was issued an Order to Show Cause and was granted voluntary departure by the immigration judge until December 10, 1974.

Counsel states that the applicant's wife would suffer extreme hardship in Pakistan because the country "is an extremely dangerous and hostile environment for U.S. Citizens." *Brief in support of appeal at Section 3.* Counsel further asserts that as an Indian national and a Catholic, the applicant's wife would be in danger due to the tensions between the two countries and violence and discrimination against non-Muslims in Pakistan. The AAO notes that none of the evidence submitted supports counsel's assertion that Pakistanis have "killed Indians in India and Pakistan for many years" and that "[I]t is unsafe for person [sic] a person born in India to live in Pakistan." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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). Counsel did, however, submit evidence of persecution of Christians in Pakistan, such as kidnappings and murders of Christians and bombings and attacks at Christian churches. These incidents included an attack by a mob on 60 women gathered at a Christian church and an attack by five gunmen on Christians leaving Easter services, killing one and injuring

seven. See *U.S. Department of State, 2005 International Religious Freedom Report, Exhibit C*. The potential danger to the applicant's wife if she attended a Christian church and the resulting infringement on her right and the right of family to practice their faith, combined with the economic hardship caused by the loss of employment of the applicant and his wife in the United States, would constitute extreme hardship to the applicant's wife if she were to relocate to Pakistan with her husband. See *Form I-864 Affidavit of Support and supporting documents, indicating that the applicant's wife's salary in 2004 was \$160,316 per year*.

Counsel states that the applicant would accompany her husband if he were deported to Pakistan and does not specifically address whether the applicant's wife would suffer extreme hardship if she chose to remain in the United States. The AAO notes that as U.S. Citizens, neither the applicant's wife nor their children would be required to depart the United States with the applicant. For the applicant to qualify for the waiver, it must therefore also be proven that his wife would suffer extreme hardship if she remained in the United States rather than accompanying her husband to Pakistan. The report from [REDACTED] states that the applicant "provides essential and irreplaceable [sic] physical, emotional, financial, and instrumental care," and "they feel that the loss of [REDACTED] would be devastating to the family." It further states that the applicant's wife has feelings of depression and anxiety and reports finding it difficult to concentrate and sleep. A letter from the applicant's wife submitted with the waiver application dated February 2, 2005 further states, "Separation of my husband from the family will be highly detrimental as it will tear apart the togetherness of the [REDACTED] family."

[REDACTED] states that the applicant and his wife "report that their persistent and excessive worry about separation from one another . . . has caused them anxiety and sadness and reflects their inability to function in a healthy manner in each other's absence." *Report at 18*. The report concludes, "The loss of [REDACTED] would be devastating to her family members and [REDACTED] would become completely overwhelmed, frightened, and alone." See *Report at 28*. The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on psychological testing and interviews of the applicant, his wife, and children, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for any mental illness or disorder. It appears that the applicant's wife had not previously sought treatment for her symptoms of depression or anxiety before the denial of her husband's waiver application. The report from [REDACTED] does not appear to reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The evidence does not establish that the emotional hardship the applicant's wife is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation. Although the depth of her distress caused by concerns over her husband's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

Further, although the emotional effects of a serious medical condition of a qualifying relative's child could be considered in assessing her claim of extreme hardship, the evidence in the present case does not establish that either of the applicant's children is suffering from such a condition. The report from [REDACTED] quotes the applicant's daughter, who stated that she was born with a hole in her heart and needs "regular medical checkup and follow up visits." *Report at 20*. Aside from this reference to the condition, no evidence or more specific information was provided to establish that the applicant's daughter suffers from a serious medical condition that would result in extreme hardship to the applicant's wife if he were deported.

The emotional harm the applicant's wife would suffer from being separated from her husband appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. 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, 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. The court in *Hassan v. INS, supra*, further held 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

It is also noted that the I-130 Petition for Alien Relative appears to have been erroneously approved. The applicant was found to have sought immediate relative status as the spouse of a U.S. Citizen by reason of a marriage entered into for the purposes of evading the immigration laws. This finding, which led to the revocation of the immigrant visa petition submitted by the applicant's U.S. Citizen wife in 1974, renders him ineligible under INA § 204(c), 8 U.S.C. § 1154(c), to be accorded status as a beneficiary of a petition under section 204 of the Act.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.