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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

PUBLIC COPY

U.S. Citizenship and Immigration Services

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AUG 1 1 2009

FILE: [redacted] Office: SEATTLE, WA Date:

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.

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 waiver application was denied by the District Director, Seattle, Washington 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States 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 his spouse and their U.S. citizen child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated August 31, 2006.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) has erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. Counsel also asserts that the applicant is entitled to have his Application to Register Permanent Residence or Adjust Status (Form I-485) approved, that prior misrepresentation charges can no longer prejudice his case as he has been granted withholding of removal before an Immigration Judge. *Form I-290B.*

In support of the waiver, the record includes, but is not limited to, a statement from counsel; statements from the applicant's spouse; statements from family members and friends; statements from the applicant; telephone, medical, veterinarian, and hotel bill statements; a bank statement; airline tickets, boarding passes, and receipts; money transfers; Pakistani police information reports; Pakistani media articles; and published country conditions reports. The entire record was reviewed and considered in rendering this decision.

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.

Prior to addressing whether the applicant qualifies for a waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel asserts that the applicant is entitled to have his Form I-485 application approved because he was granted withholding of removal before an Immigration Judge. *Form I-290B*. The AAO notes that it does not have jurisdiction over Form I-485 cases. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). However, the AAO observes that the withholding of removal order issued by the Immigration Judge is not relevant to the applicant's eligibility for adjustment of status. Withholding of removal, unlike an approved asylum claim, does not open an avenue to lawful permanent resident status.

The record reflects that on April 10, 2001 the applicant was admitted to the United States in San Francisco, California by presenting his brother's Pakistani passport and B1/B2 visa to the airport inspector. *Form I-213, Record of Deportable/Inadmissible Alien*, dated November 14, 2001; *Memorandum to Immigration Court*, dated February 29, 2004. In that the applicant sought to enter the United States using his brother's passport and visa, he is inadmissible under section 212(a)(6)(C) of the Act for seeking admission through fraud or willful misrepresentation of a material fact.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Pakistan or the United States, as she 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.

If the applicant's spouse joins the applicant in Pakistan, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate*. She does not speak the language in Pakistan and believes the culture shock would be traumatic. *Statement from the applicant's spouse*, undated. The applicant states that life for him and his spouse would be dangerous in Pakistan. *Statement from the applicant*, dated February 1, 2004. Country conditions reports state that security forces committed extrajudicial killings, and the police and security forces were responsible for the deaths of a number of individuals associated with political or terrorist groups during the year. *Pakistan, Country Reports on Human Rights Practices – 2003, U.S. Dept. of State*, dated February 25, 2004. On June 12, 2009, the United States Department of State issued a travel warning in light of the threat of terrorist activity. *Travel Warning, Pakistan, United States Department of State*, dated June 12, 2009. The AAO also acknowledges that the applicant was granted withholding of removal to Pakistan. *Order of the Immigration Judge*, dated June 3, 2004. Most of the family of the applicant's spouse lives in Spokane, Washington or nearby, including her sister, grandparents, parents, uncles, aunts, and many cousins. *Statement from the applicant's spouse*, undated. Being away from her family would devastate the applicant's spouse as well as her young child. *Id.* The applicant's spouse is a stay-at-home mother and is also available to care for her elderly grandparents with whom she and the applicant reside. *Id.* Her elderly grandparents need assisted living, which she and the applicant provide. *Id.* They were born in 1923 and 1927 and are too frail to travel or to live in Pakistan. *Id.; Statement from the grandparents of the applicant's spouse*, dated January 22, 2004. When looking at the aforementioned factors, particularly the applicant's spouse's lack of familial and cultural ties to Pakistan, her inability to speak the language in Pakistan and the effect this would have upon her adjustment, published country conditions reports documenting the human rights situation in Pakistan, her numerous family ties in the United States, and the care she provides to her grandparents who are too elderly to travel, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Pakistan.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States and has numerous family members in the United States, most of whom live in or close to the same city as the applicant's spouse. *Birth certificate; Statement from the applicant's spouse*, undated. The applicant's spouse states that the applicant works and handles the business, which allows her to stay at home with their daughter and provide assistance to her elderly grandparents. *Id.* The applicant's spouse states that if the applicant were to be removed from the United States, they would lose everything. *Id.* The record, however, does not provide sufficient documentation to establish the financial circumstances of the applicant and his spouse and, therefore, the financial impact of his removal. Moreover, as just indicated, the applicant's spouse has a large family, most of whom live in the same community or nearby. The record does not indicate that these family

members would be unable or unwilling to assist her financially or with childcare if she obtained employment.

The applicant's spouse states that the loss of the applicant would be unbearable and would have a devastating effect that she and her daughter would never be able to overcome. *Statement from the applicant's spouse,* undated. The AAO acknowledges the emotions of the applicant's spouse, but does not find the record to include documentation, e.g. an evaluation performed by a licensed mental health practitioner, to demonstrate that the applicant's inadmissibility would result in extreme emotional hardship to his spouse. 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if she remains in the United States, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(6)(C) of the Act. 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(a)(6)(C) 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 appeal will be dismissed.

ORDER: The appeal is dismissed.