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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: ATLANTA, GA

Date:

AUG 19 2009

IN RE:

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:

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 Field Office Director, Atlanta, Georgia and the matter 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 pursuant to section 212(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(6)(C)(i), for having entered the United States through fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The field office director determined that the applicant had failed to demonstrate that a qualifying relative would suffer extreme hardship. She denied the application accordingly. *Decision of the Field Office Director*, dated December 7, 2007.¹

On appeal, counsel contends that the applicant has submitted sufficient documentation to prove that his spouse would suffer extreme hardship, including evidence that his spouse would not receive adequate medical care in Pakistan. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated January 3, 2008.

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.

¹ The AAO notes that the field office director's denial of the Form I-601, Application for Waiver of Ground of Excludability, dated December 7, 2007 was incorporated into the decision she issued denying the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status. The applicant appealed this decision. On January 31, 2008, the field office director issued a second, independent denial of the Form I-601, reiterating the bases for denial that she had previously articulated. Accordingly, the applicant's appeal of the field office director's December 7, 2007 decision also covers that issued on January 31, 2008.

The record indicates that, in December 1995, the applicant entered the United States using a photo-substituted Dutch passport. Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation.²

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 a qualifying family member. In the present case, the only qualifying relative is the applicant's spouse, [REDACTED]. Hardship the alien experiences or that is felt by other family members as a result of separation is not considered in section 212(i) waiver proceedings, except as it affects the applicant's spouse. Should the record establish that [REDACTED] would experience extreme hardship, it will be 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 alien 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. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

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 the applicant must prove that [REDACTED] would experience extreme hardship whether she relocates to Pakistan or remains in the United States without him, as she is not required to reside outside the United States based on the denial of the applicant's waiver request.

Before considering the record with respect to the applicant's claim to extreme hardship, the AAO will address counsel's assertion that the applicant was not provided with sufficient time to provide

² The record also indicates that the applicant entered the United States without inspection on December 13, 1993 and that, on October 11, 1995, an immigration judge granted him voluntary departure until July 10, 1996. The applicant departed the United States in compliance with the order of voluntary departure.

documentation in support of his Form I-601 waiver application, specifically that he was not given the opportunity to provide documentation in the form of medical records and other evidence to demonstrate [REDACTED] ongoing medical problems as a result of ovarian cysts. While the AAO notes counsel's concerns, it observes that the appeals process has offered the applicant the opportunity to supplement the record with additional evidence in support of his waiver application, including medical records demonstrating the state of [REDACTED] health. In the present matter, however, the record fails to indicate that the applicant has taken advantage of this opportunity as neither the Form I-290B, nor counsel's brief, dated January 29, 2008, was submitted with medical evidence documenting [REDACTED] medical problems subsequent to 2005.

The AAO now turns to a consideration of the record.

In support of the applicant's waiver, the record includes, but is not limited to, statements from the applicant's spouse, dated May 23, 2003 and an unspecified date in 2007; medical documentation relating to the applicant's spouse; documentation of the applicant's and his spouse's business, including a business license and registration, a certificate of incorporation and articles of incorporation; a life insurance policy certificate; joint tax returns and W-2 forms; 2003 bank records, 2003 utility and telephone bills, and social security statements for the applicant and his spouse. The entire record was reviewed and considered in rendering this decision.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event that she relocates to Pakistan. Counsel states that the applicant's spouse has lived in the United States her entire life, has never traveled abroad and has no family or cultural ties to Pakistan. He further states that she does not speak the language and has no training or education that would allow her to easily obtain employment. Counsel also points to the political climate in Pakistan and the attitude toward the United States and the West as proof that [REDACTED] would not be welcome in Pakistan. Most importantly, counsel states, [REDACTED] would not be able to obtain medical care in Pakistan. He asserts that [REDACTED] has an ongoing problem with ovarian cysts, is still undergoing monitoring for her condition, and that she has required recent trips to the hospital to deal with the side-effects of her condition. Counsel also contends that [REDACTED] is the primary caretaker for her mother who has been recently diagnosed with cancer. [REDACTED] reports, in her 2003 and 2007 statements, that as a result of ovarian cysts, she has had surgery to remove both ovaries and that it was the applicant who supported her during this very difficult time. She contends that, if she relocated to Pakistan, she would not be able to obtain the type of medical care she has received in the United States and that she would not have health insurance. [REDACTED] further states that she is worried about living in Pakistan where anti-American sentiment is extremely high and that the United States has issued warnings to U.S. citizens about traveling to Pakistan.

The AAO acknowledges both counsel's and [REDACTED] claims about the risk to U.S. citizens in Pakistan and notes that, on June 12, 2009, the U.S. Department of State updated its travel warning for Pakistan, advising U.S. citizens against visiting Pakistan because of ongoing security concerns. It also notes that the applicant's spouse does not speak Urdu and would have no family in Pakistan beyond the applicant.

The record also contains medical documentation that demonstrates that [REDACTED] underwent ovarian cystectomies in 2003 and 2005. A January 8, 2003 letter from [REDACTED] offers proof that, in 2003, [REDACTED] was being treated for chronic pelvic pain. At that time, [REDACTED] stated that it

would be difficult to control [REDACTED] pain if she were to be treated by medical personnel unfamiliar with her medical situation and, further, that it would be beneficial for her to remain in the United States where technological advances allowed for the management and treatment of her pain. The AAO notes, however, that [REDACTED]'s letter was written prior to either of [REDACTED] surgeries and the record contains no medical assessment of the extent to which these surgeries have eliminated or, at least, alleviated her prior medical problems, including her chronic pelvic pain. An October 10, 2007 letter from the office manager of the Gynecology & Obstetrics Professional Group of West Georgia indicates only that [REDACTED] underwent a cystectomy on July 27, 2005. The remainder of the medical evidence in the record documents [REDACTED] medical condition in 2002 and 2003. Accordingly, the AAO finds that the record does not establish the status of [REDACTED] physical health or that she continues to require medical care. It further finds that the record also fails to support counsel's assertion that [REDACTED] would be unable to obtain medical care in Pakistan. The record contains no documentary evidence, e.g., published country conditions reports, that demonstrates that adequate medical treatment would be unavailable to [REDACTED] upon relocation. The same lack of documentation undercuts counsel's assertion that [REDACTED] is currently caring for her mother who has been diagnosed with cancer. The record includes no proof that [REDACTED] mother is suffering from cancer or that her daughter is her primary caregiver. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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).

Although the record does not establish [REDACTED] health or that of her mother as a factor that would affect her ability to relocate with the applicant, the AAO, nevertheless, finds the applicant to have established that his spouse would suffer extreme hardship if she moved to Pakistan. When considered in the aggregate, the security risks to U.S. citizens in Pakistan, [REDACTED] lack of family in or cultural ties to Pakistan, and her inability to speak Urdu or any of the other languages of Pakistan, are sufficient to distinguish [REDACTED]'s hardship upon relocation from that normally experienced by individuals accompanying their spouses overseas. Accordingly, the AAO finds the applicant to have established that his spouse would suffer extreme hardship if she were to relocate with him to Pakistan.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse if she remains in the United States. On appeal, counsel states that [REDACTED] despair over her inability to bear children has been greatly ameliorated by the applicant's presence and that she would suffer extreme emotional, physical and financial injuries if she were to be unable to live in the United States with the applicant. In her 2007 statement, [REDACTED] states that should the applicant be removed, she does not know what she would do. She asserts that when the applicant was in immigration custody for six months, it was incredibly difficult for her to support herself and pay for her medical care. She also states that during the applicant's detention, she became emotionally and physically distraught. [REDACTED] further asserts that she and the applicant have their own business and that the applicant has been running the business while she has been in and out of the hospital. [REDACTED] states that although she has family living near her, they all have their own lives and health issues that prevent them from dedicating their lives and time to her like the applicant.

While the AAO notes the claims made by counsel and [REDACTED] regarding the emotional and financial hardship she would experience in the applicant's absence, it again finds the record to lack the

documentary evidence to support them. Although [REDACTED] states that she has depended on the applicant to run their business while she has been in and out of the hospital, the record does not offer documentary evidence that she has been hospitalized since her second cystectomy in 2005. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)). Neither, as previously discussed, does the record establish that she continues to suffer from the same health problems that resulted in her two cystectomies. Accordingly, the AAO does not find the record to demonstrate that [REDACTED] physical health prevents her from working in the family business to support herself if the applicant were to be removed. Moreover, although counsel states that the applicant's removal would result in extreme emotional hardship for [REDACTED] the AAO does not find the record to offer any documentary evidence of the state of [REDACTED] mental health or the emotional impact that the applicant's removal would have on his spouse, e.g., an evaluation by a licensed mental health professional. The record also fails to document counsel's claim that [REDACTED] would suffer extreme financial hardship in the applicant's absence. There is no evidence that establishes the costs, if any, of [REDACTED] current medical treatment or that addresses her financial situation in the applicant's absence. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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).

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.

The record, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that [REDACTED] would face extreme hardship if the applicant were removed and she continued to reside in the United States. The record does not demonstrate that she would experience hardship beyond the distress and upheaval routinely created by the removal of a spouse. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, the prospect of separation nearly always results in considerable hardship to the individuals and families involved, the Congress, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," did not intend that a waiver be granted in every case where a qualifying relationship and, thus, familial and emotional bonds exist. The point made in this and prior AAO decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal,

expected hardship involved in such cases. Accordingly, the applicant has not established that [REDACTED] would suffer extreme hardship if she remained in the United States following his removal.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by his removal from the United States. 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(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 appeal will be dismissed.

ORDER: The appeal is dismissed.