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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: FEB 03 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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 Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Pakistan, the husband of a United States citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife. The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application. On appeal, counsel argued that the evidence adequately demonstrates that the applicant's wife would suffer extreme hardship if the waiver application is denied.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

In an affidavit dated July 3, 2006, the applicant stated that he left Pakistan during June 1995 and within a few days used a Canadian passport issued to someone else in order to enter the United States. In the appeal brief he submitted, counsel stated, “[The applicant] admits to entering the United States with the use of another person's Canadian passport”

The district director found that using the passport of another to enter the United States constituted fraud within the meaning of section 212(a)(6)(C)(i) of the Act and that the applicant is therefore inadmissible. The applicant and counsel do not challenge those findings.

Section 212(i)(1) provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien”

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully

resident spouse or parent of the applicant. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative. If extreme hardship to a 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).

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 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).

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).

In the brief, counsel stated that the applicant's wife is "absolutely dependent on her husband for financial, physical, and emotional support." Initially, the AAO will address those hardship factors separately.

Counsel also stated that the applicant's wife's daughter is also unemployed and also dependent on the applicant's support. As was stated above, hardship to the applicant's wife's daughter is not a permissible consideration except as it occasions hardship to the applicant's wife, the qualifying relative in this case.

As to the financial burden that would be imposed on the applicant's wife if waiver is not granted, counsel stated that the applicant's wife is no longer employed as a seamstress because of her osteoarthritis and that she does not wish to receive public assistance. Counsel stated that the

applicant's wife is no longer able to survive in the United States alone.¹ Counsel stated that the applicant's wife's home is encumbered by a mortgage, and that without the applicant's financial assistance she will be forced to sell her home in the current weak real estate market. The applicant's wife stated, in an affidavit she signed on July 27, 2006, that "[The applicant] has been supporting [her] since [they] were married in 2001."

Whether the applicant is supporting his wife, and whether the applicant's wife is, in fact, working, are unclear from the record. The record contains the applicant's wife's Form 1040 U.S. Individual Income Tax Returns from 1998, 1999, and 2000, during which years she filed as head of household and claimed business income of \$11,350, \$10,483, and \$14,323, respectively, income derived from her clothing business.

The record contains a 2005 Form 1040 U.S. Individual Income Tax Return filed jointly by the applicant and the applicant's spouse, on which they claimed business income of \$12,287, which corresponds roughly to the amount the applicant's wife made during previous years when she worked as a seamstress. An appended Schedule C shows that the applicant and his wife earned that business income through a sole proprietorship they operate out of their own home. They described the principal business of that company as "General Maintenance/Handyman."

The record also contains a Form I-864 Affidavit of Support that the applicant's wife signed on July 27, 2006 in attempting to demonstrate that she is able to support the applicant, her husband. At Part 4, Section A of that form the applicant's wife stated that she is self-employed in "Clother sales/altering/embroidering." [sic] The applicant's wife further stated, at Part 4, Section C of that form, that she had individual income of \$12,287 during 2005. That amount corresponds to the amount shown on the 2005 Schedule C provided. The applicant's wife appears to have claimed to have earned that amount by working as a seamstress.

That the information on the tax return is contradicted by the information on the affidavit of support calls into question the provenance of the \$12,287 in business income. Further, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The petitioner must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The record also contains a sworn statement by the applicant's wife dated August 24, 2006. In that statement, the applicant attested that she is self-employed at home, doing embroidery, stitching, and clothing repair. This suggests that the applicant's wife continued to work as a seamstress at least through August 24, 2006.

¹ Counsel also stated that the applicant's wife's daughter is also unemployed and also dependent on the applicant's support. This office notes that, pursuant to section 212(i)(1), hardship to the applicant's wife's daughter is not a permissible consideration except insofar as it is shown to effect hardship on a qualifying relative, in this case, the applicant's wife.

The record also contains earnings statements showing that the applicant's wife showing that was working part-time for [REDACTED], in Watertown, Connecticut, at least as late as August 2006.

The record does not strongly support counsel's assertion, made in the appeal brief submitted November 15, 2006, that the applicant's wife has been forced by her health concerns to cease working. Further, even assuming that the applicant's wife has been forced to stop working, counsel did not indicate whether social security disability or other public assistance is available to the applicant's wife. That counsel stated, without any support in the record, that the applicant's wife does not wish to receive public assistance does not support a finding that it is unavailable to her, thus requiring the financial assistance of her husband.

Counsel alleges that additional hardship would be imposed on the applicant's wife's if waiver is not granted because of her medical conditions. In the appeal brief, counsel stated that the applicant suffers from high blood pressure, osteoarthritis, and a chronic cough. In support of that assertion, counsel provided a July 25, 2006 letter from a doctor at an outpatient treatment center at a local hospital. The body of that letter states, in its entirety:

[The applicant's wife] is a patient at [this clinic]. She has multiple medical problems, notably high blood pressure, osteoarthritis, and a chronic cough."

The physician's letter did not state the severity of any of those medical conditions or the extent to which they may limit the applicant's wife's activities. Without such evidence the AAO cannot find that the applicant's absence would impose any medical hardship on his wife.

In her July 27, 2006 affidavit the applicant's wife stated that, while in Pakistan, she dislocated her hip and broke her pelvis and forearm. She indicated that those injuries still cause her pain that make walking difficult. She also stated that she has been diagnosed with high blood pressure, osteoarthritis, and a chronic cough, and that she is on prescription medication for those conditions. She further stated that the applicant helps her bathe and exercise, and massages her muscles to prevent stiffness and to assuage pain due to arthritis. The applicant's wife stated, yet further, that the applicant picks up her prescriptions and does grocery shopping. On appeal, counsel asserted that the applicant's children might conceivably, for any number of reasons, be unable to provide similar assistance.

Counsel's speculation is no substitute for evidence. The record contains no evidence that the other family members are unable or unwilling to render assistance. Further, the evidence is insufficient to establish that the applicant's wife's medical conditions are of such severity that they require daily time-intensive care. Absent such evidence the record does not demonstrate that the applicant's wife would suffer any hardship based on this factor, the loss of the applicant's provision of exercise, bathing, massage, shopping, and similar assistance and services. Further, no matter what else is demonstrated, *Matter of Cervantes-Gonzalez, supra*, indicates, as was noted above, that the presence

of the applicant's other relatives in the United States, in this case her children, mitigates whatever hardship she might suffer by remaining in the United States without her husband.

Counsel noted that a March 8, 2006 report from the United States Department of State indicated that women's health is a low priority in Pakistan. Counsel did not, however, indicate how this is likely to affect the applicant's wife's specific complaints in the event that she elects to move to Pakistan.

Counsel further notes that an earthquake in Pakistan's North West Frontier Province killed an estimated 53,000 Pakistanis, injured more than 70,000, and destroyed more than half of the healthcare facilities in the affected region. Counsel did not indicate that the applicant, if removed from the United States to Pakistan, would settle in that affected region in the North West Frontier Province. The record contains no indication that the applicant's wife will suffer any consequences from that past earthquake if she relocates in Pakistan.

Counsel provided the text of the State Department report described above, and noted Pakistan's poor record pertinent to women's rights, as described therein. That report, as quoted by counsel, stated,

Domestic violence was a widespread and serious problem. Husbands frequently beat, and occasionally killed, their wives, and often newly married women were abused and harassed by their in-laws. Dowry and family-related disputes often resulted in death or disfigurement through burning or acid.

Counsel concedes that the applicant is not abusive, but asserts that no guarantee exists that he could protect his wife from abuse. The AAO notes that, absent some indication that the applicant or some member of his family, or of the applicant's wife's family, will abuse the applicant's wife, domestic violence cannot be made an issue in this matter. Counsel has provided no evidence that such a fate is likely to befall the applicant's wife in Pakistan. Counsel has not provided any evidence that suggests that women in Pakistan are likely to be assaulted by anyone outside their families.

Counsel further notes that the State Department report indicates that women are discriminated against in employment, frequently paid less for similar work. As counsel has indicated that the applicant's wife is unable to work, this has no relevance to the instant case.

Counsel argues that the director "applied the 'exceptional and extremely unusual' hardship standard instead of the governing 'extreme hardship' standard" in analyzing the facts of the instant case. The decision of the director on the waiver application does not use the phrase "exceptional and extremely unusual hardship," but consistently refers to "extreme hardship." Contrary to the assertion of counsel, the record contains no indication that the director applied the wrong standard in this case. Further, even if the wrong standard were applied previously, that error would be corrected by the AAO's *de novo* review.

In the instant case, the record contains no evidence that, if the applicant is removed from the United States, she will suffer extreme hardship based on her medical conditions or financial concerns, whether she follows the applicant to Pakistan or remains in the United States. The remaining

concern raised by counsel is whether the applicant would suffer an unusual degree of emotional harm.

Counsel stated, “[The applicant’s wife] is absolutely dependent on [the applicant] for . . . emotional support,” but did not provide any clarification of that abstract statement. The applicant’s wife stated, in her July 27, 2006 affidavit, that the applicant has become a surrogate father to her children and is loving and caring. The record contains nothing further pertinent to any emotional hardship the applicant would suffer if her husband is removed.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse faces extreme hardship if the applicant is refused admission and is removed, whether or not she leaves with him. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant’s immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence.

While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme* hardship,” Congress made plain that it 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 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 INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable.

The AAO need not, therefore, dwell on whether this is an appropriate case in which to exercise its discretion to grant a waiver.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.