

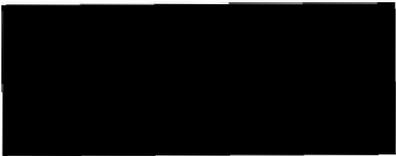
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: BALTIMORE, MD Date: NOV 05 2009

IN RE: Applicant: [REDACTED]

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

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, 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)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude (Theft: \$500 plus value). The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the District Director* dated May 16, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in failing to consider all of the hardships to the applicant's wife and failing to consider the hardships in the aggregate. *Brief in Support of Appeal* at 1. Specifically, counsel states that the applicant's wife suffers from severe health problems, including psychological and emotional problems resulting from a pregnancy that had to be terminated because she was suffering from heart-failure, and **she relies on the applicant for emotional support.** *Brief* at 2-3. Counsel further asserts that the applicant's wife would suffer financial hardship due to loss of the applicant's income if the applicant were removed from the United States and would have difficulty paying her bills. *Brief* at 3. Counsel additionally claims that the applicant's wife would suffer extreme hardship if she relocated to Pakistan with the applicant because she would have difficulty adjusting to life there and would have no support system, would be in danger because she is a Christian, and would be denied career advancement. *Brief* at 3. Counsel further maintains that the applicant's wife would not have access to adequate medical care for her heart condition and depression and would be at risk if she became pregnant due to the risk of complications. *Brief* at 3. Counsel additionally claims that denying the applicant's waiver application would violate the applicant's wife's constitutional rights to marry and reside with the husband of her choice. *Brief* at 3-4. In support of the appeal, counsel submitted a letter from the applicant's wife, copies of medical records for the applicant's wife, and a copy of the court disposition for the applicant's conviction for theft. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

Section 212(h) of the Act states in pertinent part:

- (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

- (i) [T]his activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

- (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The applicant was found guilty of the offense of theft of property valued at \$500 or more and placed on probation for 18 months and ordered to complete 40 hours of community service after receiving probation before judgment on January 23, 2002 in Baltimore County, Maryland. Section 6-220 of the Criminal Procedures Article of the Maryland Code provides, in pertinent part:

Section 6-220. Probation before judgment

(b)(1) When a defendant pleads guilty or nolo contendere or is found guilty of a crime, a court may stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions if:

(i) the court finds that the best interests of the defendant and the public welfare would be served; and

(ii) the defendant gives written consent after determination of guilt or acceptance of a nolo contendere plea.

Counsel asserts that the applicant has not been convicted of a crime involving moral turpitude because the applicant pleaded not guilty and did not admit to committing the essential elements of the crime, and there was no actual determination of guilt. *Brief* at 4. Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A) provides, in pertinent part:

(48) (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The Maryland probation before judgment statute "plainly requires that a determination of guilt must precede the granting of probation before judgment." *State Bd. of Physicians v. Rudman* 185 Md.App. 1, 19, 968 A.2d 606, 617 (2009) (citing *Howard County Dept. of Social Services v. Linda J.*, 161 Md.App. 402, 869 A.2d 404 (2005)). Although the applicant pleaded not guilty to the crime of theft, he was determined by the court to be guilty of this crime and a punishment or penalty of probation and community service was imposed. The applicant was therefore convicted of theft, a crime involving moral turpitude, for immigration purposes regardless of whether he is considered to have a conviction under states law. The applicant was convicted for conduct that took place less than fifteen years ago and therefore does not qualify for a waiver under section 212(h)(1)(A) of the Act, but he may seek a waiver under section 212(h)(1)(B) of the Act.

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. 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.

In the present case, the record reflects that the applicant is a twenty-nine year-old native and citizen of Pakistan who entered the United States on August 19, 1998 as an F-1 student with permission to remain for the duration of his status. He married his wife, a thirty-one year-old native and citizen of the United States, on July 30, 2004. The applicant and his wife reside in Baltimore, Maryland.¹

Counsel asserts that the applicant’s wife would suffer extreme hardship if the applicant were removed from the United States because she is suffering from medical and psychological conditions that cause her to rely on the applicant for emotional support. In support of this assertion counsel submitted copies of “Limited Medical Records” for the applicant’s wife and states,

[O]ther personal medical and psychiatric records are too personal and confidential to release into evidence. Heather is not comfortable releasing those confidential records for this matter, and Hassan does not desire to file such personal records against his wife’s wishes.

The records submitted consist of a one-page document indicating that the applicant’s wife was hospitalized for heart failure in July 2006. The document contains handwritten discharge instructions that are largely illegible. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant’s wife’s current condition is serious enough to amount to extreme hardship if the applicant is removed from the United States. The one-page medical record submitted indicates that the applicant’s wife was hospitalized for heart failure in 2006, but provides no more detail about her current condition, such as a letter in plain language from her physician describing the exact nature of her condition, the prognosis for recovery, and any treatment or assistance needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed.

¹ Government records indicate that at the time the appeal was filed, the applicant was the subject of a protection order preventing him from contacting his wife, and it therefore appears that they were not residing together at that time.

Counsel asserts that the applicant's wife is suffering from depression related to the termination of her pregnancy due to her heart condition, and her condition "must still be monitored and treated." No evidence was submitted indicating that the applicant's wife has been diagnosed with or is being treated for depression or documenting the termination of her pregnancy due to medical complications. 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).

In a letter the applicant's wife states that the applicant helps her physically, emotionally, and mentally. *Letter from* [REDACTED] dated January 30, 2007. She further states that she suffers from severe depression since losing their twins when she was five months pregnant and that she loves the applicant and he is everything to her. *Id.* As noted above, no documentation was submitted concerning the termination of the applicant's wife's pregnancy and no evidence was submitted indicating that the applicant's wife suffered from depression. 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)). The evidence is insufficient to establish that any emotional harm the applicant's wife might experience if the applicant is removed is more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. A waiver of inadmissibility is available only 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 exists. Further, records indicate that the applicant's wife obtained a protection order against him in November 2006 and that the order was in effect at the time the waiver application and appeal were filed. No information or explanation of this matter was provided with the appeal, and the issuance of a protection order undermines the claim that the applicant's wife relies on the applicant for emotional support and would suffer emotional or psychological hardship if he were removed from the United States.

Counsel asserts that the applicant's wife would suffer financial hardship due to loss of the applicant's income and would be unable to pay her bills on her own. No documentation of her income, the applicant's income, or their expenses was submitted to support this assertion. Further, in a letter explaining why she had filed no income tax return for 2005, the applicant's wife states that she was a student and was not working, but that she was able to support herself because she is the beneficiary of a trust fund set up by her grandfather from which she is to receive regular distributions for the rest of her life. *See Letter from* [REDACTED] dated October 17, 2006. The record indicates that the applicant's wife does not rely on the applicant for financial support, and living without his income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere

showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Pakistan due to various factors, including lack of a support system, difficulty adjusting to conditions there, "likely endangerment to her life as she is a Christian while Pakistan is a Muslim country," and discrimination against her "both socially and in her career." See *Brief* at 3. No documentation concerning conditions in Pakistan or the applicant's wife's career or family ties to the United States was submitted to support these claims, and the assertions of counsel will not satisfy the applicant's burden of proof. Counsel additionally claims that the applicant's wife would be at risk due to her medical condition and the lack of adequate medical facilities in Pakistan, particularly if she were to have another high-risk pregnancy. As noted above, the record does not contain sufficient documentation to establish that the applicant's wife suffers from a significant medical condition that would cause her to suffer extreme hardship if she were to relocate to Pakistan, and the record contains no information on medical care in Pakistan. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Further, although counsel states that the applicant's wife "desires to remain with her husband with whom she has a strong bond of love and devotion," the record indicates that she had obtained a protection order against him that was in effect at the time the appeal was filed, and no explanation was provided concerning the reasons for the protection order or whether the applicant continues to reside with his wife.

The evidence on the record is insufficient to establish that any emotional, financial, or physical hardship that the applicant's wife would experience would be other than 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. Citizen spouse would suffer extreme hardship if he is denied a waiver of inadmissibility. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.