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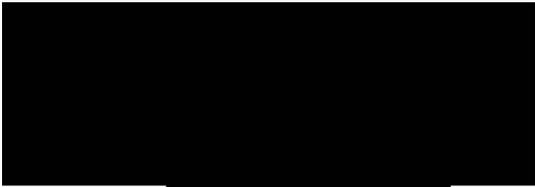
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



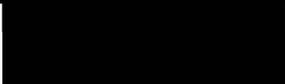
U.S. Citizenship  
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FILE:



Office: COLUMBUS, OHIO

Date: NOV 30 2009

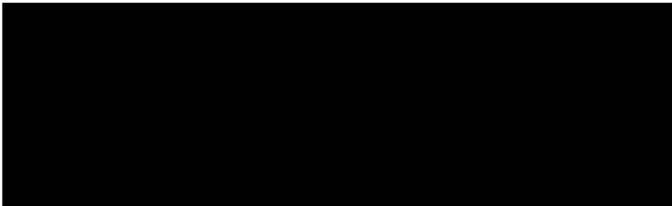
IN RE:

Applicant:



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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Columbus, Ohio, and 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 who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by presenting a passport in someone else's name. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen spouse.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 24, 2007.

On appeal, the applicant, through counsel, asserts that "[t]he denial issued by USCIS is clearly erroneous and it constitutes an abuse of discretion." *Form I-290B*, filed June 20, 2007.

The record includes, but is not limited to, counsel's appeal brief, affidavits from the applicant and his wife, a psychological evaluation on the applicant's wife, and country reports on Pakistan. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

In the present application, the record indicates that the applicant initially entered the United States in 1995 by presenting a passport in someone else's name. On March 19, 1997, the applicant married [REDACTED], a United States citizen, in New York. On April 1, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On May 29, 1997, the applicant's wife filed a Form I-130 on behalf of the applicant. On April 27, 2000, the applicant's Form I-130 and Form I-485 were denied. On December 11, 2000, the applicant and [REDACTED] divorced. On July 24, 2004, Monsey Take-Out RC filed a Petition for Alien Worker (Form I-140) on behalf of the applicant. On October 22, 2004, the applicant's Form I-140 was approved. On May 3, 2004, the applicant filed a second Form I-485. On June 14, 2005, the Director, Vermont Service Center, revoked the applicant's Form I-140. On October 12, 2005, the applicant's second Form I-485 was denied. On October 18, 2005, the applicant, through counsel, filed a motion to reopen the Form I-485. On May 3, 2006, the Director denied the applicant's motion to reopen. On July 28, 2006, the applicant married [REDACTED], a United States citizen, in Ohio. On September 13, 2006, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed a third Form I-485. On February 20, 2007, the applicant's Form I-130 was approved. On May 16, 2007, the applicant filed a Form I-601. On May 24, 2007, the applicant's third Form I-485 was denied. On May 24, 2007, the Field Office Director denied the Form I-601, finding that the applicant failed to demonstrate extreme hardship to his qualifying relative.

The AAO notes that counsel does not dispute that the applicant misrepresented himself in order to gain entry into the United States; therefore, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien himself experiences upon removal is irrelevant to a section 212(i) waiver proceeding; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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.

Counsel claims “that the documents submitted in the initial I-601 filing demonstrate support for [the applicant’s wife’s] lack of safety if she moved to Pakistan.” *Appeal Brief*, dated July 17, 2007. Counsel submitted various country reports on Pakistan, including a travel warning to United States citizens. The AAO notes that country conditions in Pakistan have deteriorated and it is not unreasonable to assume that the applicant’s wife, as a United States citizen, may experience hardship should she join the applicant in Pakistan.

The record establishes that the applicant’s spouse would suffer extreme hardship if she joins the applicant in Pakistan. However, counsel did not establish that the applicant’s wife would suffer extreme hardship if she stays in the United States without the applicant. Counsel states “[the applicant’s wife] will indeed suffer extreme hardship if she remains in the US alone and separated from [the applicant].” *Id.* In an evaluation dated March 19, 2007, [REDACTED] diagnosed the applicant’s wife with major depression. Counsel states the applicant’s wife “is currently being treated weekly for her depression.” *Id.* However, the AAO notes that other than counsel’s statement, there was no documentation submitted establishing that the applicant’s wife is seeking weekly treatment for her depression. Additionally, the AAO notes that although the input of any mental health professional is respected and valuable, the submitted assessment is based on one interview between the applicant’s wife and a counselor. There was no evidence submitted establishing an ongoing relationship between the counselor and the applicant’s wife. Moreover, the conclusions reached in the submitted assessment, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the counselor’s findings speculative and diminishing the assessment’s value to a determination of extreme hardship. In an affidavit dated May 5, 2007, the applicant’s wife states she and the applicant own two stores that they “manage on a day to day basis. [Their] source of financial support is these stores.” The applicant’s wife further states that if the applicant returns to Pakistan without her, “the costs of phone communication to speak to [the applicant] would be high and [she] would soon enter in extreme financial hardship.” The AAO notes that that record fails to demonstrate that the applicant will be unable to contribute to his wife’s financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his wife if she remains in the United States.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant’s wife will endure hardship as a result of separation from the applicant; however, she has not demonstrated extreme hardship if she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s wife caused by the applicant’s inadmissibility to 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 212(a)(6)(C)(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.