

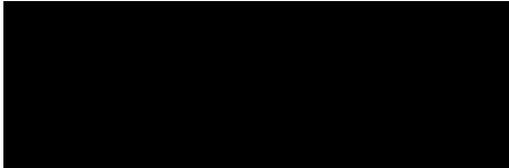
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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Services**

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FILE: [REDACTED] Office: ROME, ITALY Date: OCT 01 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and Section 212(i) of the 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy. 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 who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to his spouse and denied the waiver application accordingly. *Decision of the District Director*, dated May 24, 2007.

On appeal, counsel contends that the district director erred in finding that the applicant is inadmissible for fraud or misrepresentation. Specifically, counsel contends the applicant withdrew his asylum application, which was, according to counsel, “based on the fabrications of an unscrupulous preparer.” Counsel claims the asylum application was filed “without Applicant’s full knowledge or acquiescence [by a preparer] who also acted as translator at Applicant’s initial asylum interview in order to perpetuate the misrepresentations at the interview.” Counsel alternatively contends that even if the applicant is inadmissible for misrepresentation, he nonetheless established that his wife would suffer extreme hardship if his waiver application were denied. *Applicant’s Brief in Support of Appeal*, dated July 18, 2007; *Notice of Appeal or Motion (Form I-290B)*, dated June 22, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on September 19, 2002; affidavits from [REDACTED] and her four sons from previous relationships; a letter from [REDACTED] employer; a copy of the U.S. Department of State’s Travel Warning for Pakistan and 2005 Country Reports on Human Rights Practices for Pakistan; a copy of an order from an immigration judge granting the applicant’s request for voluntary departure; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

Section 212(i) provides:

(1) 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.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(iii) Exceptions.

....

(II) Asylees. - No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would

result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In this case, the district director found, and counsel does not contest, that the applicant entered the United States on March 9, 1997, as a C-1 crewman authorized to stay in the United States until March 20, 1997. The applicant did not depart the United States and, more than three years later, in December 2000, the applicant, a citizen of Pakistan, filed an application for asylum claiming he was a citizen of Afghanistan. In February 2002, the USCIS San Francisco Asylum Office referred the application to an immigration judge. *Referral Notice*, dated February 26, 2002 (finding the applicant did not establish past persecution or a reasonable possibility of future persecution). On August 4, 2004, the immigration judge granted the applicant's request for voluntary departure. *Order of the Immigration Judge*, dated August 4, 2004. The applicant timely and voluntarily departed the United States in August 2004.

Counsel's contention that the applicant is not inadmissible for fraud or misrepresentation is unpersuasive. First, counsel's contention that the "[a]pplicant did not speak or read English at the time of the interview," *Applicant's Brief in Support of Appeal* at 3, is contradicted by the asylum interview notes in the record which indicate the applicant told the immigration officer he "understand[s] a little English." *Asylum Interview Notes*, February 12, 2002. Second, counsel's contention that the "[a]pplicant had difficulty understanding and communicating with the interpreter," and that "[h]e did not understand what was happening during the interview," *Applicant's Brief in Support of Appeal* at 3, is contradicted by the asylum interview notes which show that the applicant was explicitly asked whether he understood the interpreter and the applicant responded that he understood the interpreter. *Asylum Interview Notes, supra; see also Record of Applicant's Oath During an Interview*, dated February 12, 2002. In fact, the applicant indicated during his interview that his asylum application was read back to him in his native language and asserted that his application was all true and correct. *Asylum Interview Notes, supra*. Third, the applicant certified under penalty of perjury that his asylum application was true and correct, and he signed his application a second time after the interview, swearing that the contents of his application were true. *Application for Asylum and/or Withholding of Removal*, dated December 22, 2000, and February 12, 2002. Finally, the applicant has not submitted an affidavit asserting that he did not understand the contents of his asylum application or that he did not understand what happened during his asylum interview, as counsel claims. 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). Based on these factors, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for submitting a fraudulent asylum application.

Additionally, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in August 2004. Although the statute provides for an exception for the period of time during which an alien has a pending asylum application, the asylum application must be a bona fide application. Section 212(a)(9)(B)(iii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii)(II). In this case, as described above, the

applicant did not submit a bona fide asylum application. Therefore, the applicant accrued unlawful presence of seven years. He now seeks admission within ten years of his 2004 departure. Accordingly, the applicant is also inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of more than one year.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 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. See section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v); section 212(i) of the Act, 8 U.S.C. § 1182(i). 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).

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 under the Act. These 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.

In this case, the applicant's wife, _____ states that she would suffer extreme emotional, physical, and economic hardship if her husband's waiver application were denied. _____ states that she has lived in Massachusetts her entire life and that all of her family members, including her four sons previous relationships and her four grandchildren, live nearby. She states her oldest son, _____ has three children whom he is trying to raise as a single parent after the children's mother abandoned them. According to _____ two years ago, _____ requested assistance from the Massachusetts Department of Social Services to find adequate housing for him and his children but, instead, the children were taken into foster care. _____ states that _____ has been working to regain full custodial rights to his children and has found stable employment and an apartment. She contends she has supported him in every way she can by picking up the children weekly and returning them to foster care, and helping _____ financially. _____ claims _____ has come to rely on her completely throughout this process and states that she would never forgive herself if she was unable to be there for her son and grandchildren at this difficult time to provide whatever assistance they need. In addition, _____ states that her son, _____ is divorced and has joint custody of his daughter. _____ states she has worked very hard to keep strong, supportive family ties in place for her granddaughter. Furthermore, _____ states that she is involved in a number of local animal rescue programs and currently owns and cares for four horses and two cats. She states that it would be extremely difficult for her to move to Pakistan as she could no longer care for these animals and would feel considerable guilt abandoning them. Moreover, _____ a registered nurse, states that she has worked for the same employer since 1987. She contends she would be forced to give up her career if she moved to Pakistan and would be unlikely to find employment in Pakistan because she is a

Western, non-Muslim woman who would have to overcome significant language barriers. [REDACTED] [REDACTED] also contends she fears moving to Pakistan given the current political turmoil, violence, and unrest there. Finally, [REDACTED] states that since her husband departed the United States, she is “beside [her]self with loneliness.” She contends she “cannot think straight [and that her] life has been ruined by this process.” [REDACTED] states that it has been suggested she seek psychiatric help, but she has not done so because she has hope the government will permit her husband to return to the United States. She states she fears taking medication because her work is too important to her and she does not want to risk dampening her abilities. In addition, [REDACTED] states she has suffered financial hardship. She states their home needs considerable work and repairs that she has been unable to afford on her own, and she claims she has not been able to financially help her son, [REDACTED], in the manner she had hoped. *Affidavit of [REDACTED]* dated October 13, 2006; *Letter from [REDACTED]* undated.

[REDACTED]’s son, [REDACTED], states that the applicant is a kind, decent, and considerate man. [REDACTED] states that his mother will be emotionally destroyed if the applicant is not permitted to return to the United States. [REDACTED] states that his mother helped intercede on his behalf after authorities put his children into foster care and helped arrange regular, weekly visitations so that he could remain involved in his children’s lives. He states his mother has helped him find stable employment and suitable housing, and that he is close to bringing his children home, something he could not have done without his mother’s help. [REDACTED] claims he and his brothers rely on their mother greatly and that she is the “mainstay” of their family. He contends she will suffer terribly if the applicant cannot return to the United States and that she will never feel able to leave the United States to be with him because of all of her ties in the United States. *Affidavit of [REDACTED]* dated August 20, 2006.

[REDACTED]’s son, [REDACTED], states that his mother has provided a “safe haven” for his daughter, a place where she feels loved and special, despite tensions between her parents and changes in her home life. [REDACTED] states that his daughter’s favorite past time is to visit the stables with her grandmother and care for her animals. He states that it has been very difficult for his mother since the applicant departed the United States and that they have all suffered in the applicant’s absence. *Affidavit of [REDACTED]* dated August 20, 2006; *see also Affidavit of [REDACTED]*, dated August 19, 2006; *Affidavit of [REDACTED]* dated August 27, 2006.

After a careful review of the record evidence, it is not evident that the applicant’s spouse has suffered or will suffer extreme hardship as a result of the applicant’s waiver being denied.

As a preliminary matter, the AAO notes that the applicant and [REDACTED] married on September 19, 2002, after the immigration judge issued his order granting the applicant voluntary departure on August 4, 2004. Therefore, the equity of their marriage, and the weight given to any hardship [REDACTED] may experience, is diminished as they began their marriage with the knowledge that the applicant might not be permitted to re-enter the United States. *See Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien’s possible deportation); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has

been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (a “post-deportation equity” need not be accorded great weight).

The AAO finds that if [REDACTED] had to move to Pakistan to be with her husband, she would suffer extreme hardship. The record contains ample evidence that the political situation in Pakistan is precarious and the U.S. Department of State has warned U.S. citizens to defer non-essential travel to Pakistan. *See, e.g., U.S. Department of State, Travel Warning, Pakistan*, dated April 2006. In addition, the record indicates [REDACTED] who is currently sixty-one years old, has lived in the United States her entire life and has played an integral role in her sons’ and grandchildren’s lives. Furthermore, [REDACTED] would have to give up her job as a registered nurse at the Caritas Good Samaritan Medical Center, where she has worked for over twenty years, and may not be able to find employment in Pakistan. The record therefore shows that if [REDACTED] were to move to Pakistan, she would experience hardship above and beyond what would normally be associated with deportation.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the family’s circumstances, there is no evidence [REDACTED] emotional or physical hardship rises to the level of extreme hardship. There is no letter from any health care professional or mental health professional diagnosing [REDACTED] with any medical or mental health condition that requires her husband’s assistance. Rather, if [REDACTED] remains in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

With respect to [REDACTED] financial hardship claim, there are no tax or financial documents whatsoever in the record. There is no documentation regarding [REDACTED] income or regular expenses and there are no copies of any bills in the record. Furthermore, there is no evidence showing the extent to which the applicant provided financial assistance to [REDACTED] when he was working in the United States. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

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, 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.