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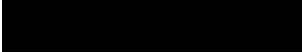
U.S. Citizenship
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FILE:  Office: ALBANY, NY Date: **OCT 05 2009**

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 Field Office Director, Albany, New York, denied the instant waiver application, which 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 U.S. citizen, the father of a U.S. citizen daughter, 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 reside in the United States with her husband and daughter. 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 contended that the evidence in the record demonstrates that denial of the waiver application will cause extreme hardship to the applicant's wife. Although counsel did not contest the field office director's determination of inadmissibility, the AAO will review that determination.

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.

An I-94 Departure Record shows that the applicant entered the United States on March 18, 2004 on an A-2 visa as an official of a foreign government, with permission to remain while on official business. At an interview on September 19, 2006, before a USCIS officer, the applicant stated that he had worked for the government of Pakistan and continued to work for it as the personal secretary of the Pakistani Secretary of Defense for one or two months after he entered the United States.

An investigation revealed that the applicant has never worked for the Pakistani government. In an affidavit dated March 14, 2007, the applicant admitted that upon his arrival at JFK airport, he misrepresented that he was a government official.

The AAO finds that the applicant knowingly misrepresented a material fact as contemplated in section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act 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 or his child is not directly 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 in this case. 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 nonexclusive list of 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).

The record contains a letter, dated March 4, 2007, from [REDACTED], a licensed psychologist with offices in Rexford and Latham, New York. [REDACTED] stated that she examined the applicant and his wife on February 22, 2007. She stated that all of the applicant's family still resides in Pakistan, other than his wife and child.

[REDACTED] stated that if the applicant is removed to Pakistan he will have difficulty finding adequate employment. He offered no basis for his opinion pertinent to the applicant's employment prospects

in Pakistan. He further stated that the applicant's wife has no marketable skills and that, if she followed the applicant to Pakistan, she would be unable to assist the family financially and would be separated from her mother and siblings, all of whom live in the United States. She stated that in Pakistan the applicant's daughter would be denied educational opportunities and medical resources that are unavailable in Pakistan, and the applicant's wife would be unable to help care for her mother, who is ill.

stated that, on the other hand, if the applicant were removed to Pakistan and his wife remained in the United States with her daughter, the applicant's wife and child would be destitute and the daughter would be separated from her father.

stated that the applicant's wife is rational, well-oriented, and without debilitating or pervasive mental disorder, but that the applicant's wife is progressively more fearful and suffers from sleep difficulties and fatigue. stated that the applicant's wife is in constant emotional turmoil and distress, feels hopeless, and engages in suicidal ideation, but is unlikely to act on those thoughts. diagnosed the applicant's wife with major clinical depression and generalized anxiety disorder, and stated that the primary source of her condition is the applicant's immigration status.

A notarized letter, dated March 14, 2007, from the applicant states that the applicant worked for his cousin in Pakistan for seven years. A G-325A Biographic Information form that the applicant's wife signed on May 1, 2006 indicates that she worked in data entry for Bank of America from August 2005 to November 2005. A 2005 Form W-2 Wage and Tax Statement shows that Tri-city Manpower, Inc. of Albany, New York, paid the applicant's wife \$282.17 during that year. Whether those wages were paid for her employment for Bank of America is unknown to the AAO. On an addendum to a Form I-864, Affidavit of Support, in the record, the applicant's wife stated that she had not worked during 2003 or 2004, and that her entire 2005 income was \$282.17.

A notarized letter, dated March 14, 2007, from the applicant's wife states that she has numerous family members in the United States, but only two aunts and an uncle in Pakistan. The applicant's wife noted that she is raising a daughter and states that she has no employable skills. She stated that if the applicant is removed to Pakistan and she remains in the United States she will have no one to support her, but that if she accompanies him to Pakistan he will be unable to support her and their child. The applicant's wife stated that she helps to care for her mother, who suffers from high blood pressure, high cholesterol, and recurring pain and swelling in her legs. The applicant's wife stated that living and social conditions in Pakistan are horrible for women, and that health conditions in Pakistan are horrible for women and babies.

The record contains a copy of a report on human rights practices in Pakistan and content from a website maintained by the World Health Organization pertinent to public health practices in Pakistan. That report indicated that societal discrimination against women, including domestic violence, rape, honor killings, mutilations, and sexual harassment, is common. It indicated that discrimination against women in employment is common, as is discrimination in the legal system, including discrimination in family law and property law. One group in Pakistan continues to

practice female genital mutilation. It also indicated that health care for children is inadequate, and that child abuse and child labor are common.

The record contains a list of the applicant's wife's family members who live in Pakistan and a list of her family members who are in the United States, along with evidence of the presence and status of those relatives identified as living in the United States. The applicant's wife's mother, two brothers, two sisters, four cousins, a nephew, and an aunt, all live in Colonie, New York, which is very close to the residence of the applicant and the applicant's wife in Albany, New York. The list appears to indicate that all of the applicant's wife's relatives live at the same address in Colonie, New York. The applicant's wife has two aunts and an uncle in Pakistan.

The record contains a list of the applicant's immediate family's recurring expenses, which amount to \$2,061 per month.

The only corroborating evidence of the applicant's wife's claim of depression is the March 4, 2007 letter from [REDACTED]. Having consulted with the applicant and his wife on one occasion, [REDACTED] diagnosed that the applicant's wife is essentially well-adjusted but suffers from major clinical depression and generalized anxiety disorder because of the applicant's immigration status. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single meeting between the applicant's wife and the psychologist. The record fails to reflect an ongoing relationship with the applicant's wife or any history of treatment for the disorders suffered by the applicant's wife. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship. The record contains insufficient evidence to corroborate the applicant's wife's claim that she is suffering from depression.

[REDACTED] also stated that the applicant and his wife would have a difficult time finding suitable employment in Pakistan. As was noted above, [REDACTED] did not explain his basis for that opinion. The record does not indicate that [REDACTED] has expert knowledge pertinent to employment in Pakistan or the prospects of the applicant there. The AAO notes that the applicant has lived and worked in Pakistan previously and that his entire family, other than his wife and child, is there. The evidence is insufficient to show that the applicant would be unable, or face difficulty, in finding suitable employment in Pakistan.

[REDACTED] and the applicant's wife noted that, if she accompanies the applicant to Pakistan to live, the applicant's wife will be separated from her mother, her siblings, and her extended family in the United States. Although this appears to be a result typical of removal of an alien, the AAO concedes that it would cause the applicant's wife some degree of hardship, especially in view of the applicant's mother's illnesses.

The State Department's Country Report on Human Rights Practices also indicates that limited education is offered to girls in Pakistan. This difference might also occasion some degree of hardship to the applicant's child, and therefore to the applicant's wife.

The applicant's wife has indicated that if she and the applicant's child return to Pakistan, the medical care available to her child would be unsatisfactory. The evidence provided supports that health care for children in Pakistan is poor. Although the record does not indicate that the applicant's child has any preexisting health conditions, the lack of quality health care for their child would cause some degree of hardship to the applicant's wife. The AAO will accord significant weight to that hardship.

The record contains evidence pertinent to other conditions in Pakistan. The State Department's Country Report on Human Rights Practices indicates that sexual harassment, domestic violence, and rape are widespread and rarely prosecuted. Victims who report rape may actually face prosecution themselves, for adultery or fornication, if they are unable to prove to the satisfaction of authorities that they did not consent to sex. Honor killings and mutilations occur for minor infractions, real or imagined. A small sect continues to practice female genital mutilation. The applicant's wife has lived in the United States since she was 15 years old, and would face considerable hardship in adjusting to a culture characterized by such cavalier treatment of women.

The AAO finds that, if the applicant is removed from the United States and his wife accompanies him, she will face various hardships, as discussed above, which, when considered together, would rise to the level of extreme hardship.

Another issue is whether, if the applicant is removed from the United States and the applicant's wife remains in the United States, whether the hardship she would then face would rise to the level of extreme hardship. The applicant and counsel have, in that context, discussed financial and emotional factors.

The applicant's wife has stated that she has no employable skills, that she depends entirely on her husband for support, and that if the waiver application is denied, she will have no one to support her. [REDACTED] also stated that the applicant's wife is unable to support herself. The AAO notes that the applicant's wife's financial needs, as stated on the list of the family's recurring expenses, are modest, and might be satisfied by employment in almost any full-time job. [REDACTED] stated that the applicant's wife is "rational, well-oriented, and without debilitating or pervasive mental disorder," and that she is "quite fluent in English." Although there appears to be no barrier to her seeking employment, the record contains no indication that she has investigated that possibility.

Further, in the event that the applicant is removed from the United States, the record shows that the applicant's wife has family members on whom to rely. The record shows that the applicant's wife's mother and four siblings live in Colonie, near the applicant's wife's current residence. Various members of the applicant's wife's extended family also live there. Family ties is an important factor, in part because relatives often provide assistance when a spouse is removed, and the applicant has failed to adequately address the possibility that assistance of this kind will ameliorate the financial or other hardship his wife may experience if she remains in the United States.

The evidence in the record is insufficient to show that, if the applicant is removed to Pakistan and his wife remains in the United States, his wife will suffer financial hardship which, when considered together with the other hardship factors in this matter, would rise to the level of extreme hardship.

The applicant has not asserted that his wife would suffer hardship from medical factors if he is removed to Pakistan and she remains in the United States. The AAO finds that the evidence in the record is insufficient to show that, if the applicant returns to Pakistan and his wife remains in the United States, that his wife will suffer medical hardship which, when considered with the other hardship factors in this case, would rise to the level of extreme hardship.

Another issue is the emotional hardship that would be wrought if the applicant is removed to Pakistan and the applicant's wife remains, with their child, in the United States. The applicant's wife noted that their child, in that event, would be raised without her father. The AAO is aware that such a separation would cause hardship to the child which, in turn, would cause hardship to the applicant's wife.

In nearly every qualifying relationship, however, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 the familial and emotional bonds, exist.

The record demonstrates that the applicant has devoted family members who are concerned about the prospect of the applicant's departure from the United States. Although the depth of the concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than 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 record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant is refused admission. Rather, the record suggests 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.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen wife as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 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.