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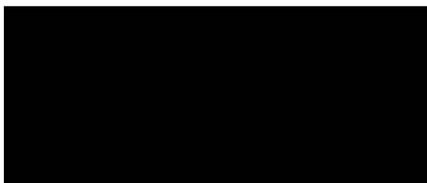
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEWARK, NEW JERSEY Date: **JUL 30 2008**

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a Lawful Permanent Resident and is the beneficiary of a pending Petition for Alien Relative. The applicant initially entered the United States without inspection in January 1989 and remained in the United States until January 9, 1999, when she was removed to Pakistan. The applicant applied for a Nonimmigrant V visa 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), in order to return to the United States and reside with her spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated May 3, 2004. The applicant also applied for Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212), and this application was denied in the same decision denying the waiver application. In situations like the applicant's case where an applicant must file Form I-212 and Form I-601, the Adjudicator's Field Manual states that Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states:

If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

Thus, the AAO will only consider the applicant's waiver application and inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

On appeal, counsel asserts that Citizenship and Immigration Services ("CIS") misapplied the law and incorrectly stated the facts. On appeal counsel requested 60 days in order to submit a brief and/or additional evidence. As of this date, over four years later, no additional statement or evidence has been submitted. On June 28, 2008 the AAO sent a facsimile to counsel requesting copies of any brief or additional materials which had been submitted. No response was received. The record is considered complete.

In support of the waiver application, counsel submitted two letters from the applicant's husband's doctors, a copy of a prescription, copies of telephone records documenting calls to Pakistan, and letters from co-workers of the applicant's husband describing the effects of his separation from the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (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.

....

- (v) Waiver. – The Attorney General [now Secretary, 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 *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. In *Hassan v. INS*, *supra*, the court further held that the 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. 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.

The record reflects that the applicant resided in the United States from January 1989, when she entered without inspection at the age of eleven, to January 1999, when she was removed to Pakistan. The immigration judge denied her applications for asylum and suspension of deportation and ordered her to voluntarily depart the United States. The voluntary departure order converted to a removal order on April 12, 1997, thirty days after the BIA dismissed the applicant's appeal of the immigration judge's decision on March 13, 1997.

Counsel states that the applicant voluntarily departed the United States in September 1997 and re-entered the United States without inspection in November 1998 after traveling to Canada. *See letter from counsel to U.S. Consulate in Islamabad, Pakistan* dated January 30, 2002. The AAO notes that the record contains no

statement from the applicant indicating that she had departed the United States and re-entered before her 1999 removal. The record does contain a copy of a stamp in the applicant's passport indicating that she re-entered Pakistan on September 4, 1997, but even if this establishes she departed the United States on or before that date, there is no evidence supporting counsel's assertion that she remained outside the United States until November 1998. 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). It appears that the applicant was unlawfully present in the United States from April 1, 1997, the date section 212(a)(9)(B)(i)(II) of the Act went into effect, to January 9, 1999, the date she was removed to Pakistan. In the alternative, the applicant was unlawfully present in the United States from an unknown date until she was removed in January 1999. The burden of proving admissibility remains with the applicant, and the evidence on the record is insufficient to establish that the applicant's unlawful presence in the United States before her January 1999 removal amounted to less than one year. See Section 291 of the Act, 8 U.S.C. § 1361.

The record further reflects that the applicant's husband is a native and citizen of Pakistan and Lawful Permanent Resident who resides in Boonton, New Jersey. The applicant's husband states that since the applicant was removed, his "personal life, [his] health, and [his] emotions have been severely affected." Letter from [REDACTED] dated October 6, 2003. He further states,

[M]y professional life and financial position are deteriorating, and it might lead to the disaster of my happy married life. Sometimes I believe I will lose my mind. It feels like a punishment of loneliness without her.

The record also includes letters from two physicians at the Medical Institute of New Jersey that state the applicant's husband is under treatment for depression. The letters state that the applicant's husband has been under treatment since May 1, 2001, that his depression appears to be a result of his separation from his wife, and that he has been prescribed medications including Paxil and Zoloft to treat his insomnia and anxiety. See letter from [REDACTED] dated November 11, 2003 and letter from [REDACTED] dated September 26, 2002. It appears that the applicant's husband began experiencing symptoms including insomnia and anxiety after his wife's removal from the United States, and his physician has prescribed him medications to alleviate these symptoms. The AAO notes, however, that, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any diagnosis of a serious medical or psychological condition.

Letters from colleagues state that the applicant's husband has been sad and depressed since being separated from his wife, that his mental state has deteriorated, and that his work performance has been affected. See letters from [REDACTED] dated September 2002. There is, however, no medical evidence, such as a detailed letter from a treating psychologist or psychiatrist, indicating that the applicant's husband suffers from serious depression that would prevent him from performing his job duties or otherwise jeopardize his employment. The evidence does not establish that the depression and anxiety the applicant's husband is experiencing is more serious than the type of hardship a family member would normally suffer when faced with his spouse's deportation or exclusion. Although the depth of his distress caused by being separated from his wife is not in question, a waiver of

inadmissibility is only available 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, and thus familial and emotional bonds, exists.

The applicant’s husband states that separation from the applicant has also affected him financially. In support of the waiver application counsel submitted telephone records indicating that the applicant’s husband makes regular calls to Pakistan. Other documents in the record, including bank statements, a 2001 letter from the applicant’s employer, a 2002 statement from the applicant’s savings and investment plan, records of wire transfers of money to the applicant in Pakistan, and a copy of an airline ticket indicating the applicant’s husband has traveled to Pakistan, were also reviewed and considered. Although it appears the applicant’s husband has incurred additional expenses as a result of the applicant’s removal to Pakistan, including the cost of telephone calls and travel to Pakistan, they appear to be the type of hardship normally expected as a result of deportation or exclusion. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (stating that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (stating that separation of family members and financial difficulties alone do not establish extreme hardship).

The record reviewed in its entirety does not support a finding that the applicant’s spouse faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. 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). The applicant made no claim that her husband would experience hardship if he were to relocate with her to Pakistan. Therefore, the AAO cannot make a determination of whether the applicant’s husband would suffer extreme hardship if he moved to Pakistan.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her Lawful Permanent Resident spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.