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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



H3

FILE: [REDACTED] Office: ROME, ITALY (ISLAMABAD) Date: ~~08~~ 29 2008

IN RE: Applicant: [REDACTED]

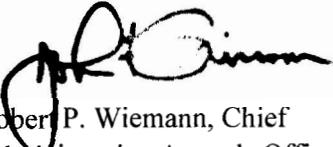
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy, 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. § 212(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States in June 1992 and remained until December 1997, when he returned to Pakistan after being granted voluntary departure by the immigration judge. He reentered the United States without inspection in April 2000 and remained until February 8, 2003, when he voluntarily returned to Pakistan. The applicant 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 his spouse.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The district director further concluded that the applicant had failed to depart the United States by February 1, 1998 as ordered by the immigration judge, and his voluntary departure order had thus converted to an order of deportation. The applicant was therefore found to be statutorily ineligible for a waiver of inadmissibility because he was also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. 1182(a)(9)(C)(i)(II), for having reentered the United States illegally after being ordered deported. The *Application for Waiver of Grounds of Inadmissibility* (Form I-601) was denied accordingly. See *Decision of the District Director* dated April 4, 2006.

On appeal, the applicant states that he departed the United States in 1997 under an order of voluntary departure by the immigration judge and later reentered the United States without inspection in 2000. The applicant further states that after being taken into custody by immigration authorities in January 2003, he was released and then voluntarily returned to Pakistan on February 8, 2003. He further states that that he was a hard worker while in the United States and wishes to live with his wife and their child and start their life together. In support of the appeal, the applicant submitted copies of an airline ticket, itinerary, and passport stamp indicating he traveled from Houston, Texas to Lahore, Pakistan on December 6, 1997. He also submitted letters from his wife, a letter from his stepdaughter's school counselor, and copies of medical records for his wife and daughter. 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (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 thirty-nine year-old native and citizen of Pakistan who entered the United States on or about June 3, 1992 at Houston, Texas. The record indicates that the applicant testified that he entered the United States with a B-2 visa, but his passport and Form I-94 were later taken from him by an “agent.” The applicant was ordered deported in absentia by an immigration judge on September 14, 1993, and was later granted voluntary departure until February 1, 1998 by the immigration judge after his deportation proceedings were reopened. *See orders of the immigration judge* dated September 14, 1993 and November 25, 1997. The applicant returned to Pakistan and then reentered the United States without inspection in April 2000 at or near Brownsville, Texas. The applicant remained in the United States until February 8, 2003, when he voluntarily returned to Pakistan. He currently resides in Lahore, Pakistan. The applicant married his wife, a native and citizen of the United States, on September 24, 2001. The applicant’s wife and U.S. citizen stepdaughter currently reside in Cedar Creek, Texas.

The district director concluded that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence of one year or more and section 212(a)(9)(C)(i)(II) of the Act for unlawful entry after being ordered removed. These findings were based on the applicant's illegal entry into the United States in April 2000 and subsequent unlawful presence until February 2003. The district director determined that the applicant had remained in the United States until after February 1, 1998 and therefore the order of voluntary departure had converted into a deportation order. The district director states,

On June 21, 2002, the applicant's deportation order was reinstated, with a departure date of July 30, 2002. The applicant failed to appear, and on January 10, 2003, was taken into custody by immigration officers. During questioning, he provided documentation that he departed the US in 1998, and also testified that he reentered the US near Brownsville, Texas, without inspection in April 2000. Given this evidence, it is clear that the applicant self deported in 1998 and that he reentered the United States illegally after his deportation.

A review of the record establishes that several of the findings of the district director are erroneous, and evidence indicates that the applicant did depart the United States before February 1, 1998 as ordered by the immigration judge. The applicant was never the subject of a reinstated deportation order, but rather was issued Form I-166, an order to appear at an immigration office for deportation, on July 30, 2002, because the Immigration and Naturalization Service believed he had never departed the United States. *See Form I-166* dated June 21, 2002. The applicant was then detained by immigration officials on January 10, 2003. The record indicates that he was released from custody after providing documentation indicating he had departed the United States by February 1, 1998 and testifying under oath that he reentered the United States without inspection in April 2000. *See Record of Sworn Statement in Affidavit Form* dated January 10, 2003.

Records provided by the applicant indicate that he traveled from Houston, Texas to Lahore, Pakistan on December 6, 1997 and arrived in Pakistan on December 7, 1997. *See passenger ticket and baggage check, itinerary, and copy of entry stamp in applicant's passport.* Further, a letter from the applicant's former attorney dated January 1998 states that the applicant wished to cancel an appointment at the Houston INS office and apply for an immigrant visa based on his previous marriage through the U.S. Consulate. *See Letter from Law Offices of [REDACTED] is dated January 7, 1998.* A *Notice of Entry of Appearance (Form G-28)* signed by the applicant on January 8, 1998 lists the applicant's address in Lahore, Pakistan. *See Form G-28* dated January 8, 1998. The AAO therefore finds that the applicant has established that he complied with the 1997 order of voluntary departure and was not subject to a deportation order before illegally entering the United States in April 2000. The applicant is, however, inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States from April 2000 until February 8, 2003.

The applicant asserts that his wife is suffering extreme emotional, physical, and economic hardship as a result of being separated from the applicant. As evidence of this hardship, the applicant submitted letters from his wife and medical records for his wife and stepdaughter. In her letter the applicant's wife states that since the applicant left the United States she has had to work double shifts to pay the bills and never has time to spend with her daughter. *See letter from [REDACTED] dated June 13, 2004.* She further states that she had been having seizures caused by stress and that her doctor told her she needed to work less and get some rest. She states, "I need my husband to come home so I can get well." *See letter from [REDACTED] dated June 13, 2004.*

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 condition is serious enough to amount to extreme hardship if the applicant is not permitted to return to the United States. The applicant submitted medical records dated January 8, 2004 indicating that his wife was brought to the emergency room after having a seizure. The records indicate that she reported having three other such episodes in the prior year but had not sought treatment. Although the applicant's wife states that her doctor found the seizures to be stress-related and advised her to work fewer hours, there is no evidence to support this assertion. No specific information concerning the cause of the seizures is provided, such as a letter in plain language from her physician describing the exact nature of her condition and any treatment or medication needed in the future. The records submitted contain descriptions of a physical examination and test results that employ medical terms and abbreviations and are not easily understood. There is no evidence of any follow-up treatment or subsequent episodes. 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.

The applicant additionally asserts that his wife is suffering economic hardship, and she states she is working double shifts due to the loss of the applicant's income. The AAO notes that no documentation of the applicant's past income, his wife's income, or the family's expenses was submitted to support the assertion that the applicant's wife is unable to pay the family's expenses without the applicant's income. 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)). Further, the record does not establish that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Living without the applicant's financial support 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).

In a letter the applicant's wife states:

My husband and I will be married for three years on September 24, 2004. We have been apart for a year and a half of that. I can not live with out [sic] him. He is my whole life. He is my true soul mate. I love him more than my life. I need him with me. *Letter from* [REDACTED] dated August 10, 2004.

No additional evidence was submitted concerning the emotional or psychological effects of being separated from the applicant. The applicant's wife states that her daughter has been diagnosed with Bipolar Disorder and her condition has worsened since the applicant has been outside the United States. *Letter from* [REDACTED] [REDACTED] dated August 10, 2004. A medical or psychological condition of the applicant's stepdaughter, who is not a qualifying relative for the waiver, could result in extreme emotional hardship to the applicant's wife if exacerbated by separation from the applicant. The documentation submitted, including a letter from a school counselor and records of medical and psychological evaluations, do not support such a finding. The medical

records contain test results and medical terminology with no explanation of the findings or any diagnosis. Neither the records nor the letter from the counselor state that the applicant's stepdaughter had been diagnosed with Bipolar Disorder. As noted above, without a letter or other documentation from her physician or a mental health provider clearly explaining her condition and prognosis, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. The evidence is insufficient to establish that any emotional harm the applicant's wife is experiencing 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. Although the depth of her concern over being separated from the applicant is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. 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.

There is no information or evidence on the record concerning potential hardship to the applicant's wife if she were to relocate to Pakistan, such as information about economic, social, or political conditions in Pakistan; the effects or relocation on the applicant's stepdaughter; or access to medical care there. Without such evidence the AAO cannot make a determination of whether relocating to Pakistan would result in extreme hardship to the applicant's wife.

Based on the evidence on the record, the emotional, financial, and physical hardship that the applicant's wife is experiencing appears to be 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(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.