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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
and Immigration
Services

H3

FILE: [REDACTED] OFFICE: FRANKFURT

Date: APR 20 2009

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 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the officer in charge for continued processing.

The record reflects that the applicant, a native and citizen of Pakistan, entered the United States as a temporary visitor in November 1997. She did not depart the United States until June 2002. She was thus 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child, born in September 1998.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 26, 2006.

In support of the appeal, counsel for the applicant submitted a brief with referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) of the Act 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.

....

(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

¹ The applicant does not contest the officer in charge's finding of inadmissibility.

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, 565-66 (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 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.

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).

The record contains several references to the hardship that the applicant's U.S. citizen child would suffer if the applicant's waiver of inadmissibility is not granted. Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their child cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse further contends that he will suffer emotional and financial hardship if the applicant's waiver request is not granted. In a declaration he states that he would suffer extreme emotional hardship due to the long and close relationship they have. He also asserts that that he will suffer emotionally because of the constant worries he has for his spouse—she attempted to kill herself while residing in Pakistan and has been diagnosed with severe depression. She has refused admission to a hospital for further treatment because no one is available to care for their child. See *Letter from* [REDACTED] dated June 19, 2006. In addition, documentation has been provided to confirm that the applicant's U.S. citizen child has been diagnosed with behavioral disorders as a result of his parents being separated, and suffers from numerous medical ailments, due to the pollution and environment in Pakistan, including Hepatitis A, gastroenteritis, upper respiratory tract infections, asthma and allergies. See *Letter from* [REDACTED] *Principal, Step by Step School*, dated April 5, 2004, and *Letter from* [REDACTED] *Pediatrician*, dated November 6, 2003. Finally, the applicant's spouse asserts that he will suffer extreme financial hardship as he is supporting two households while self-employed as a taxi driver; his work and the

expenses of both households precludes him from traveling to Pakistan on a regular basis to see his wife and child. *Brief in Support of Appeal*.

Finally, a psychological report has been provided by the applicant's spouse's treating psychologist, [REDACTED], confirming that the applicant's spouse has been under her care since May 2003, and is receiving psychotherapy for Adjustment Disorder with Mixed Anxiety and Depressed Mood and Insomnia, due to separation from his wife and son. *Psychological Report of [REDACTED] Diversified Behavioral Comprehensive Care MHS*, dated June 11, 2004.

Based on the documentation provided, the applicant has established that her spouse is suffering extreme emotional, psychological and financial hardship due to his wife's inadmissibility. The applicant's spouse is constantly concerned with the applicant's and his child's mental and physical welfare while they reside in Pakistan and due to his limited financial resources and the nature of his work, he is unable to visit his family regularly in Pakistan and/or care for his child in the United States while the applicant remains abroad due to her inadmissibility. The applicant's spouse needs his wife's and child's presence and support on a day to day basis.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's spouse asserts that relocating abroad to reside with the applicant would cause him extreme emotional and psychological hardship due to the hardships his wife and child have experienced while residing in Pakistan, including a suicide attempt by his spouse and behavioral and medical disorders with respect to his child. He also contends he would suffer financial hardship due to the substandard economy in Pakistan, as confirmed by the U.S. Department of State, and the high costs of medical and mental health care, as he can attest to as he has financed his wife and child's medical and mental health costs since they relocated abroad. *See U.S. Department of State Profile-Pakistan*, dated July 2009.

Moreover, the applicant's spouse would suffer psychological hardship as he would be forced to cease treatment with the psychologist who is familiar with his mental health condition. Finally, the AAO notes that a travel warning has been issued by the U.S. Department of State for U.S. citizens and lawful permanent residents, outlining the risks of travel to Pakistan due to violence from terrorist and sectarian groups. *See Travel Warning-Pakistan, U.S. Department of State*, dated February 28, 2009.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and child would face if the applicant were to remain in Pakistan, regardless of whether they accompanied the applicant or remained in the United States, the applicant's, her spouse's and her child's medical and mental health conditions, the apparent lack of a criminal record, letters in support provided on behalf of the applicant, community ties, payment of taxes and the passage of more than eleven years since the applicant's unauthorized entry to the United States. The unfavorable factor in this matter is the applicant's unauthorized presence in the United States.

The immigration violation committed by the applicant was serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(i)(II), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The officer in charge shall continue processing the immigrant visa application on its merits.