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U.S. Citizenship
and Immigration
Services

H3

[Redacted]

FILE: [Redacted] Office: FRANKFURT, GERMANY

Date: FEB 25 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, 8 U.S.C. section 1182(a)(9)(B)(v)

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Frankfurt, Germany. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Pakistan. He 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 one year or more. He 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 reside in the United States with his U.S. citizen spouse, [REDACTED]

In a decision dated May 26, 2006, the OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel for the applicant asserts that the finding of the OIC is an abuse of discretion, and that the OIC failed to give appropriate consideration to the factors forming the basis of the hardship claim in the applicant's case. Counsel submitted a brief and additional evidence in support of these claims.

The entire record was reviewed and considered in rendering this decision.

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 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 [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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant entered the United States without inspection as a vessel crew member on or about March 23, 1997, and remained in the United States without authorization until August 29, 2005, when he departed the United States and returned to Pakistan. As he had resided unlawfully in the United States for over a year and is now seeking admission within 10 years of his last departure from the United States, the OIC correctly found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez*, 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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant 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.

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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On February 2, 2006, the applicant filed the Form I-601, listing his U.S. citizen spouse as a qualifying relative. In support of the application for waiver, the applicant submitted a statement from his wife, dated February 1, 2006, in which she stated that without her husband, life would be difficult for her "physically and mentally." She stated that she suffers from rheumatoid arthritis and "joint pains" and, consequently, is unable to work. She claimed that she likely would lose her home and would not be able to support herself without her husband. She indicated that she has an extended family, including sisters, a daughter, two sons, and grandchildren, and that she does not wish to have to choose to remain in Pakistan with her husband and give up her family in the United States. The applicant also submitted a psychological evaluation of the applicant's wife conducted by [REDACTED], Licensed Professional Counselor, dated August 2, 2005. In his report, [REDACTED] described the results of various stress measurements and inventories applied to [REDACTED] and concluded that she showed "moderate signs of depression" and that estrangement from her husband or from her children "would likely have deleterious effects on [her] emotional and physical functioning."

In denying the application, the OIC found that the applicant has failed to show that extreme hardship exists for his qualifying relative. Specifically, the OIC observed that the record does not contain evidence of financial hardship. Further, the OIC found that although the applicant's wife claimed that a number of health-related problems would result from the separation, there is no evidence from a medical professional attesting to these factors. The OIC noted the findings in [REDACTED] report, but concluded that "the use of a 'stress checklist' does not paint a complete picture of the circumstances surrounding the separation from the applicant.

On appeal, counsel contends that the OIC's decision is an abuse of discretion. Counsel asserts that as the result of ongoing personal and health problems, the applicant's spouse "would suffer extreme and debilitating hardship should her husband be excluded from re-entry into the United States for a period of 10 years" or "if she were forced to move to Pakistan to live with [her husband.]" Counsel asserts that the applicant helped alleviate many of his wife's stress and depressive symptoms resulting from a prior abusive marriage, and separation from the applicant would **again** increase her stress and depression. Counsel claims that as an American citizen and a female [REDACTED] would be subject to great risk if she were to remain in Pakistan with the applicant for an extended period of time. Further, counsel asserts that [REDACTED] has ongoing medical concern, including severe allergies, migraines, and borderline diabetes, and medical facilities and services in Pakistan are below U.S. standards. Counsel also argues that the methodology used by [REDACTED] to evaluate [REDACTED] stress level is valid, and his report should be considered credible. Counsel concludes that [REDACTED] medical ailments, financial hardship and psychological stress, viewed in the aggregate, rise to the level of "extreme hardship." Evidence submitted on appeal includes:

1. A letter dated August 10, 2006, from [REDACTED], who identified himself as [REDACTED] primary care physician in North Carolina. Dr. [REDACTED] indicated that [REDACTED] came to his office on August 8, 2006 complaining of persistent diarrhea, nausea, and weakness with dehydration, and was sent to the Emergency Room (ER) for treatment of dehydration and then released. Dr. [REDACTED] stated that during the follow-up visit two days later, he prescribed anti-depressant and anti-anxiety medication and recommended that [REDACTED] refrain from going to Pakistan until she has overcome her gastroenteritis, dehydration, depression, anxiety and insomnia. Dr. [REDACTED] attached to his statement a copy of the ER report, which confirms his description of [REDACTED] ER visit.
2. A letter dated July 15, 2006 from [REDACTED] in Hazro City, Pakistan, describing two visits by [REDACTED] to his office in September 2005. He stated that she complained of vomiting, headache, vertigo and insomnia, appeared "depressed and anxious," but was found with no major medical physical illness. Dr. [REDACTED] stated that [REDACTED] was given antidepressants and "anxiolytics" and advised to return for monthly follow-up visits. Dr. [REDACTED] stated that she "did well on the treatment" but still felt homesick and suffered episodes of depression. Ultimately, he stated, he advised her to return to the United States.
3. A letter from [REDACTED] dated August 21, 2006, in which she stated that she remained in Pakistan with her husband after his consular interview and, after eleven months, had to return to the United States due to "physical and mental problems." She stated that she had difficulties adjusting to the culture and was "always sick with one problem or another." She explained that she was fearful of the conflict in neighboring Afghanistan. She stated that she was made ill by the separation from her family in the United States. She recounted that, upon her return to the United States, she remains in a constant state of worry about her husband, and because she now has no income, has to borrow from family and friends to pay her bills.

The record contains a further submission of evidence received by the AAO on April 4, 2008. In the letter accompanying the submission, counsel for the applicant stated that [REDACTED] "is suffering additional extreme emotional and physical hardship due to her temporary move to Pakistan in order to be with her husband." Among other things, the evidence submitted includes the following:

1. An undated letter from [REDACTED] describing her current situation in Pakistan. She stated that she is not in good health and has had to go to the doctor several times. She stated that she has had dehydration problems, and before she left the United States, was diagnosed with rheumatoid arthritis and severe depression, for which she is now taking "several medications." She states that she is torn between remaining with her husband, who apparently has no relatives in Pakistan, and returning to her family in the United States, which includes her children, grandchildren, and an older sister who is undergoing heart surgery. Mrs. [REDACTED]

described the environment in Pakistan as "extremely dangerous." She indicated that she has to take precautions to hide the fact that she is an American and a Christian.

2. An undated letter from the applicant describing his and his wife's circumstances in Pakistan. The applicant stated that they have to be "extremely cautious" because his wife is an American. He confirmed that his mother and sister live in England, and although he has some relatives in Pakistan, he does not trust them. He indicated that they subsist on what they can earn from his land, but that there are insufficient funds to meet his wife's medical needs or to send her back to the United States. Further, he expressed concern for his wife's health and ability to work in the United States.
3. [REDACTED]'s medical records in Pakistan, including: lab work results, an elbow x-ray, and clinical notes from the Khubab Medical Center dated January 21, 2008 and March 13, 2008, variously noting "elbow joint pain," pain in knees and ankle, and "lateral epicondylitis"¹ for which analgesics and limited physical activities were prescribed; and a prescription from [REDACTED] psychiatrist, dated February 27, 2008 for Esolex, Rivotril, and Livial, with the notation "SAD perimenopausal syndrome," but no other diagnostic explanation.
4. A letter from [REDACTED], who identifies herself as [REDACTED] daughter, from Thomasville, North Carolina, dated December 26, 2007.
5. Country information relating to Pakistan, including: several travel advisories from the U.S. Department of State between September 2007 and March 2008 advising certain precautions to be taken by American tourists in view of the threat of terrorist activities; articles from local newspapers in Pakistan relating to the bombing in Lahore in March 2008; an internet article entitled "Women in Pakistan – Victims of the Social and Economic Desecration" discussing gender discrimination in Pakistan.

Upon review, the AAO finds that there is insufficient evidence to support the conclusion that the applicant's spouse would experience extreme hardship as the result of the applicant's inadmissibility to the United States.

First, it is noted that central to the claim of hardship by the applicant's wife is her medical condition. Specifically, [REDACTED] claimed in her February 2006 statement that she suffers from rheumatoid arthritis and "joint pains" and is unable to work. In her letter included in the 2008 submission of evidence, she stated that she had been diagnosed with rheumatoid arthritis and severe depression. On appeal counsel asserted that [REDACTED] "has ongoing medical concern, including severe allergies, migraines, and 'borderline diabetes.'" However, the medical records submitted into evidence are insufficient to demonstrate that [REDACTED] in fact suffers these chronic medical conditions, and that they limit her ability to function, as claimed. In [REDACTED]'s evaluation and

¹ Commonly known as "tennis elbow."

in the 2006 Emergency Room clinical report, the claims of "severe allergies, migraines, and borderline diabetes" were noted as conditions reported by the patient and not as actual diagnoses by a medical professional. Similarly, there is no diagnosis of rheumatoid arthritis in the record. The notes from the Khubab Medical Center described two separate visits in January and March 2008 by [REDACTED] to the facility to address joint pains, but, without more, these documents are not sufficient to show whether [REDACTED] actually suffers a chronic and debilitating condition that limits her ability to work as claimed. Further, it is noted that the letter from [REDACTED]'s primary care physician, Dr. [REDACTED] also addresses a single episode of gastroenteritis in August 2006 and does not refer to any of the claimed chronic conditions.

With respect to [REDACTED] psychological condition, the evaluation by [REDACTED] concluded that she showed "moderate signs of depression." However, it is noted that no treatment or follow-up visits were prescribed. While the input of any mental health professional is respected and valuable, the submitted report appears to be based on a single interview between [REDACTED] and the applicant's spouse and does not reflect an ongoing relationship between the applicant's spouse and a mental health professional, or any history of treatment for the generalized psychological symptoms suffered by the applicant's spouse. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist. Consequently, the evidentiary value of [REDACTED]'s report in terms of demonstrating extreme hardship to the applicant's spouse is substantially diminished. It is noted that [REDACTED] August 2006 letter and [REDACTED]'s July 2006 letter both indicated that each prescribed anti-depressants to [REDACTED] and there is evidence that [REDACTED] was prescribed medication by a psychiatrist in Pakistan in 2008, although the condition to be treated was not discussed. However, these documents lack sufficient information regarding the nature and severity of [REDACTED]'s psychological problems, or the ongoing treatment thereof, such that her claim that she has been diagnosed with "severe depression" could be substantiated.

As noted, the applicant is required to demonstrate that his qualifying relative would suffer extreme hardship both if she remains in the United States and if she relocates to Pakistan to be with him. The AAO recognizes that [REDACTED] appears to have made a concerted effort to relocate to Pakistan to be with her husband, and has experienced some hardship as the consequence. Although the record is insufficient to show that she suffers the chronic and debilitating medical conditions claimed, as discussed above, it does appear that she has required medical attention for a number of ailments arising from her attempt to live in Pakistan, such as the incident of gastroenteritis, food-related problems, and psychological issues which she and her medical caregivers have attributed to concern about her husband's immigration status and being away from her family in the United States. The applicant and his wife both claimed that the applicant is unable to support his wife's medical costs given his limited means of earning a living in Pakistan, although the applicant has submitted no evidence to support this claim. However, it is recognized that the applicant's and his wife's fear for her safety as a Christian American woman in Pakistan, under the current political climate, is not unfounded. The applicant has submitted a number of documents describing current unrest in Pakistan. The AAO further notes that the U.S. Department of State, as of November 21, 2008, continues to issue travel advisories against non-essential travel to Pakistan by U.S. citizen, in light of the ongoing threat of terrorist activities in that country. As such, the AAO concludes that there is

sufficient evidence to demonstrate that his spouse would suffer difficulties rising to the level of "extreme hardship" in relocating to Pakistan.

However, the applicant must also establish extreme hardship to his spouse in the event she remains in the United States without him. As previously noted, the evidence of record does not support Mrs. [REDACTED] claim of having chronic and debilitating ailments such as rheumatoid arthritis and diabetes. Further, the evidence submitted tends to show medical issues relating to living conditions in Pakistan rather than in the United States. Mrs. [REDACTED] has also claimed that she is unable to work and is not able to support herself financially without her husband. Again, the record contains no evidence that [REDACTED] has a medical condition that prevents her from working, nor has the applicant presented any evidence demonstrating his wife's claimed financial hardship. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *See Matter of Soffici, supra*. Further, it is noted that the applicant's spouse has an extensive family in the United States, including three adult children, upon whom she could rely for support. In all, the evidence fails to demonstrate that the applicant's spouse would suffer "extreme hardship" if she were to remain in the United States.

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 spouse would face extreme hardship due to the applicant's inadmissibility to the United States. The AAO recognizes that the applicant's spouse will suffer as a result of separation from the applicant. However, based on the record, her hardship is not greater than that typical of individuals separated as a result of removal or inadmissibility, and therefore does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (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). 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. "[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).

In light of the foregoing, the AAO finds that the applicant has not established extreme hardship to his U.S. citizen spouse in the event she remains in the United States, and therefore has failed to establish eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. 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 under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.