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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date: **JUL 6 2009**

IN RE:

APPLICATION:

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

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 waiver application was denied by the District Director, New York, New York and the matter 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 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 and seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and has a U.S. citizen stepson. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The District Director found that the record failed to establish that the applicant's spouse, [REDACTED], would suffer extreme hardship if his waiver request were to be denied. *Decision of the District Director*, dated September 20, 2007.

On appeal, the applicant states that he was mistaken for another individual who was ordered removed from the United States and that this mistake influenced the decision in his case. He asserts that his spouse will suffer extreme hardship if he is excluded. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated October 18, 2007.

The AAO notes that the applicant has misunderstood the district director's reference to the January 13, 1996 date by which he was required to depart the United States. The district director was not referring to an order of removal, but to the date on which the applicant's nonimmigrant visa expired, i.e., the date by which he should have left the United States. Accordingly, the AAO finds no basis for concluding that the district director's decision was the result of any confusion concerning the applicant.¹

The AAO now turns to a consideration of the record.

Section 212(a)(9)(B) 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-

¹ The AAO does note that the applicant in the present case was previously identified by alien number [REDACTED], the identifier already assigned to an individual whom an immigration judge had ordered excluded in 1993. The record indicates that the confusion created by the duplicate assignment of the [REDACTED] number resulted in the administrative closure of the applicant's adjustment application in 2005 before it was determined that he was not the subject of a final order of removal. The AAO notes that the record before it continues to include a significant amount of documentation relating to this other individual, who also shares the applicant's name and date of birth, and that this documentation is interfiled with that relating to the applicant. To avoid any further possibility of confusion, the applicant's file should be reviewed and all material relating to [REDACTED] removed.

(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 admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that at the time of his adjustment interview, the applicant testified that he entered the United States on August 14, 1995 on a B-2 nonimmigrant visa. The applicant did not depart when his visa expired. On May 2, 1997, he filed for adjustment of status based on an approved Form I-130, Petition for Alien Relative, filed by a prior spouse, which was terminated on March 26, 2001. He again filed for adjustment of status on January 31, 2003 based on a Form I-130 filed by his second wife, Ms. [REDACTED] which was denied on September 20, 2007. The applicant left the United States under a grant of advance parole in or around November 2003, thereby triggering the unlawful presence provisions of the Act, and returned on February 14, 2004. The record does not indicate that the applicant has since departed the United States. Therefore, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Act until May 2, 1997, the date he filed his first adjustment application, and from March 27, 2001, the day after the termination of his first adjustment application, until he filed his second adjustment application on January 31, 2003. As the applicant accrued more than one year of unlawful presence and is seeking admission to the United States within ten years of his 2003 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act .

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or other family members experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is [REDACTED]

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 list of non-exclusive 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)].

U.S. court decisions have repeatedly 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS, supra*, held further 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.

The AAO notes that extreme hardship to [REDACTED] must be established whether she resides in Pakistan or remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will now consider the relevant factors in the adjudication of this case.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event that she relocates to Pakistan. On appeal, [REDACTED] asserts that for many reasons, including the lack of medical care available in Pakistan, neither she nor her son would be able to live with the applicant in Pakistan. The applicant indicates that she suffers from hypertension for which she takes medication and that her condition could conceivably get worse as she ages. She also asserts that her 14-year-old son has been diagnosed with a rare medical condition relating to high levels of platelets in his blood and that his hardship is her hardship. She contends that her son's hardship should be considered in determining the applicant's waiver application.

The record includes a letter from [REDACTED], dated October 17, 2007, that states Ms. [REDACTED] has been diagnosed with hypertension and takes medication for her condition on a daily basis. The letter does not, however, indicate the severity of [REDACTED]'s high blood pressure, whether it limits her ability to function on a daily basis or could do so in the future. The record also contains no documentary evidence that [REDACTED] condition could not be treated in Pakistan or that she would be unable to obtain her medication there. The AAO notes that the applicant has also submitted the results of a stress test and a mammogram and breast ultrasound performed on [REDACTED]. There is, however, no statement from any doctor treating [REDACTED] that addresses these tests and the tests themselves report no medical problem.

The record establishes that the applicant's stepson suffers from thrombocytosis. A letter from Montefiore Hospital states that the applicant's stepson has been followed by its hematology department since 1998. A second letter from [REDACTED] at the Children's Hospital at Montefiore also indicates that the applicant's stepson has a history of essential thrombocythemia and has undergone a surveillance bone marrow evaluation due to a possible progression to myeloid metaplasia, myelofibrosis, myelodysplastic syndrome or acute promyelocytic leukemia.

Based on the record before it, the AAO finds the applicant to have established that [REDACTED] would suffer extreme hardship if she were to relocate with him to Pakistan.

The second part of the analysis requires the applicant to prove that [REDACTED] would suffer extreme hardship if she remains in the United States without the applicant. In statements, dated July 17, 2007 and October 18, 2007, [REDACTED] states that the applicant has been the principal breadwinner in their family and an exceptional father to her son. She states that her first husband died prematurely and she does not want to repeat the ordeal of losing a spouse. In light of her medical condition and that of her son, [REDACTED] contends, the applicant's continued presence and support are essential. She states that a separation from the applicant will not only result in financial difficulties and an inability to maintain her present standard of living, but will aggravate her hypertension.

The AAO acknowledges that [REDACTED] would experience hardship as a result of the applicant's inadmissibility to the United States. It notes, however, that the record does not distinguish her hardship from that normally experienced by individuals whose spouses reside outside the United States as a result of exclusion or removal. The applicant has submitted insufficient documentary evidence of his and Ms. [REDACTED]'s financial circumstances or that either [REDACTED] or her son's medical treatment are dependent on his financial support. Further, although the AAO notes that [REDACTED] suffers from hypertension and her son from thrombocytosis, the record fails to indicate that either requires or receives the applicant's care. Neither does it document that [REDACTED] medical condition would worsen in the applicant's absence. The record also fails to demonstrate that [REDACTED] was previously widowed. The record includes a death certificate for [REDACTED] whose surname is shared by [REDACTED] son. However, the death certificate does not indicate that [REDACTED] was married to [REDACTED]. The marital status of the deceased is reported as "Never Married" and the blank on the certificate for "Name of Surviving Spouse" is not filled in.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present case, the AAO does not find the applicant to have established that [REDACTED] would face extreme hardship if he were to be excluded and she remained in the United States.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the AAO finds that the hardships described in the record do not support a finding that [REDACTED] would face extreme hardship if the applicant is refused admission. As the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, 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) of the Act, the burden of proving eligibility remains entirely 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.