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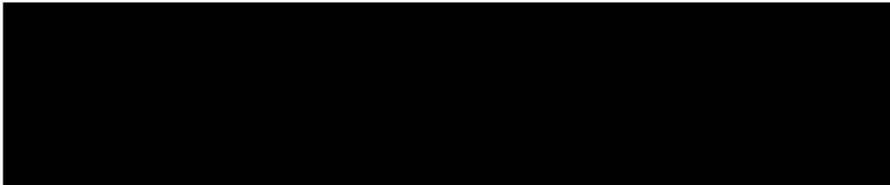
JUL 28 2009

IN RE:



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.

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), Islamabad, Pakistan. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen 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 more than one year and seeking admission within 10 years of his last departure from the United States. 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 to join his United States citizen wife, [REDACTED], and their children, [REDACTED] and [REDACTED].

The OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's spouse has a physical disability that makes it extremely difficult to work full time and support her family. Counsel states that the applicant's daughter's developmental problems contributes to and exacerbates the disability of her mother. Counsel states that the applicant's spouse's earnings are insufficient to support herself in the United States and nearly impossible to support her husband and youngest daughter in Pakistan. Counsel states that conditions in Pakistan make it nearly impossible to provide for the health, education, and future employment of the applicant's children. The entire record – including counsel's brief, financial documentation, medical documentation and the applicant's statement - was reviewed and considered in rendering this decision.

The AAO notes that the applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, and a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. Counsel filed only one appeal and indicated that the appeal was filed in connection with the denial of both applications. In situations where an applicant must file a Form I-212 and a Form I-601, the adjudicator's field manual clearly states that the 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, based on this rule, in a situation like the applicant's, where there is one appeal that has been filed and either the Form I-212 or the Form I-601 could be considered on appeal, the AAO will review the Form I-601.

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.

The record reflects that the applicant is a native and citizen of Pakistan who arrived in the United States on September 28, 1992 and requested asylum.¹ The applicant was placed in exclusion proceedings and charged with section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact; section 212(a)(7)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(B)(i)(I), as a nonimmigrant without a valid passport; and section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien without a valid immigrant visa. On March 29, 1995, the Immigration Judge denied the applicant's request for asylum and ordered him excluded and deported pursuant to section 212(a)(7)(A)(i)(I) of the Act. On April 10, 1996, the Board of Immigration Appeals dismissed the applicant's appeal. The applicant remained in the United States unlawfully until, according to his testimony, he departed for Pakistan in March 2001. Time in unlawful presence begins to accrue on April 1, 1997, the date of enactment of unlawful presence provisions under the Act. Therefore, the applicant accrued unlawful presence from April 1, 1997 to March 2001. As such, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

¹ The AAO notes that the applicant filed his Form I-589, Asylum Application, under the name _____ On the applicant's DS-230 Part I, Application for Immigrant Visa and Alien Registration, he failed to list this name as an

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 United States 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).

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.

The record reflects that the applicant wed [REDACTED] a naturalized U.S. Citizen, in Pakistan on May 3, 2001. The applicant’s spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The applicant and his spouse have a seven year old U.S. citizen child, [REDACTED] and a four year old U.S. citizen child, [REDACTED]. Hardship to the applicant’s children will be considered insofar as it results in hardship to the applicant’s spouse.

Counsel asserts that the applicant’s spouse works 30-40 hours a week at Marshall’s Department store and earns less than \$300 per week. Counsel states that this is made increasingly more difficult by the applicant’s spouse’s physical disabilities, including Rheumatoid Arthritis, Reactive Depression and Tension Type Headaches. Counsel states that the applicant’s spouse’s disabilities are made worse by the economic and emotional strains that have separated her family. Counsel states that the applicant’s younger daughter lives with him in Pakistan while the oldest daughter lives with his spouse. Counsel notes that the youngest daughter is has developmental problems. Counsel states that the applicant’s spouse works on the family farm in Pakistan and cannot provide a subsistence living. Counsel indicates that the applicant relies on his spouse for financial assistance.

The AAO will consider financial hardship as a factor in establishing extreme hardship. As evidence of financial hardship, counsel furnished a letter, dated April 26, 2007, from [REDACTED], Store Manager, Marshalls, which states that the applicant’s spouse is an hourly associate earning an average gross income of \$226.00 per week. Counsel also furnished two of the applicant’s earnings statements, which reflect that the applicant’s spouse is earning the minimum wage rate of \$7.15 per hour. The

statements show that the applicant's spouse earned a gross income of \$213.64 for 29.88 hours of employment for the pay week ending April 7, 2007 and a gross income of \$211.64 for 29.60 hours of employment for the pay week ending April 14, 2007. Lastly, counsel furnished a document entitled "Residential Lease" reflecting the applicant's spouse's monthly rent as \$850.00 per month. The AAO notes that the applicant's spouse's average annual income of \$11,752 is below the U.S. Department of Health and Human Services 2007 federal measure of poverty. The U.S. Department of Health and Human Service's 2007 federal poverty guidelines reflect that an annual income of less than \$13,690 for a family of two constitutes poverty, thus allowing for financial eligibility for certain federal program purposes.² However, sufficient documentation has not been provided to show that the applicant's spouse's financial hardship is created or exacerbated by the applicant's inadmissibility. The record fails to demonstrate that if the applicant returned to the United States with his younger daughter, he would find employment that would raise the family income above the federal measure of poverty for a family of four. The record contains no information on the applicant's background, education and skills, or where he was employed when he resided in the United States, as evidence of his employability. Further, the record contains no information on how much financial assistance the applicant receives from his spouse. Nor does the record convey how the applicant's spouse is able to manage her expenses and provide financial support to the applicant. 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). Therefore, the AAO cannot conclude, based on the record, that the applicant's spouse is facing financial hardship due to the applicant's inadmissibility.

The AAO will also consider medical hardship as a factor in establishing extreme hardship. Counsel asserts that the applicant's spouse is suffering from Rheumatoid Arthritis, Reactive Depression and Tension Type Headaches, for which she takes medication. The applicant's spouse notes in the letter she filed with the waiver application that she is finding it hard to work and support her family alone because of her medical problem. As corroborating evidence, counsel furnished a report from [REDACTED], dated June 7, 2005, which states that the applicant's spouse has Rheumatoid Arthritis. [REDACTED] prescribed the applicant's spouse medication and noted that she should be seen for follow-up. Counsel also furnished a letter, dated May 7, 2007, from [REDACTED], of the Bronx-Lebanon Hospital Center, which states that the applicant has been diagnosed with Tension Type Headache and Reactive Depression. [REDACTED] notes that the applicant's depression is secondary to concerns of the sickness of her daughter and separation from her family. [REDACTED] states that the applicant was treated for headaches and was referred to a psychiatrist for evaluation. Lastly, counsel furnished the applicant's spouse's lab results for her blood and urine tests. The AAO finds the medical documentation furnished by counsel to be insufficient evidence. For instance, Dr. [REDACTED] indicated in his June 7, 2005 letter that the applicant should be seen for a follow-up. However, the appeal, filed March 15, 2007, does not contain any additional documentation on the follow-up appointment with [REDACTED] or any other information related to the status of the applicant's treatment for Rheumatoid Arthritis. Similarly, the letter from [REDACTED] states that the

² <http://aspe.hhs.gov/POVERTY/07poverty.shtml>

applicant was referred to a psychiatrist for an evaluation. As of the date of this decision, counsel has not furnished the applicant's spouse's psychiatric evaluation to establish the severity and implications of her depression, its connection to her separation from the applicant, and whether she is currently engaged in a treatment plan. The AAO notes that 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)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they can be afforded little weight in these proceedings.

Furthermore, counsel asserts that the applicant's younger daughter, who resides with the applicant in Pakistan, has developmental problems. The AAO notes that hardship to the applicant's children will be considered insofar as it results in hardship to his spouse. Counsel cites to a letter, dated May 6, 2007, from [REDACTED] which states that the applicant's younger daughter is suffering from gastroenteritis, dehydration and malnutrition. The AAO observes that the notes attached to Dr.

[REDACTED] letter are in handwriting that is illegible, and as such, are without significant value. The AAO finds that [REDACTED] letter fails to describe the medical hardship indicated by counsel. Dr. [REDACTED] letter states that the applicant's child had gastroenteritis, an inflammation of the lining of the intestines caused by a virus, bacteria or parasites.³ There is no indication in the record that the applicant's child's illness is an ongoing condition that is the result of her separation from the applicant or related to developmental problems. Nor is there any other medical documentation in the record related to counsel's assertion that the applicant's child has developmental problems. As previously stated, 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. Therefore, the AAO cannot conclude that the applicant's child is suffering from medical hardship due to her separation from her mother.

The AAO recognizes that the applicant's spouse is suffering emotionally as a result of her separation from the applicant and their child. Her situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. 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 exists. 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 be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties

³ <http://www.nlm.nih.gov/medlineplus/gastroenteritis.html>

alone do not establish extreme hardship). “[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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO notes that the facts in the present case are analogous to the facts in *Matter of Cervantes-Gonzalez*, *supra*. In *Matter of Cervantes-Gonzalez*, the BIA took into consideration the qualifying family member’s expectations at the time that she married the respondent (applicant), and stated that:

The respondent’s wife knew that the respondent was in deportation proceedings that the time they were married. In contrast to the respondent’s assertions on appeal, this factor is not irrelevant. Rather, it goes to the respondent’s wife’s expectations at the time they were wed. Indeed, she was aware that she may have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. In the latter scenario, the respondent’s wife was also aware that a move to Mexico would separate her from her family in California. We find this to undermine the respondent’s argument that his wife will suffer extreme hardship if he is deported.

22 I&N Dec. 560, 566-567 (BIA 1999).

In the present case, the applicant had been ordered excluded and deported from the United States at the time that he married his spouse. It is reasonable to expect that the applicant’s spouse knew of his prior residence in the United States and deportation at the time they wed, and she has not indicated otherwise. This factor is relevant to the applicant’s spouse’s expectations at the time that she married the applicant. The applicant’s spouse was aware that she may have to face the decision of parting from the applicant or following him to Pakistan in the event that he was denied admission. Pursuant to *Matter of Cervantes-Gonzalez*, *supra*, this factor undermines the applicant’s spouse’s claim that she would suffer extreme hardship if the applicant were denied admission to the United States.

Furthermore, counsel has not established that the applicant’s spouse would suffer hardship if she moved with the applicant to Pakistan. 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. In *Matter of Cervantes-Gonzalez*, the BIA noted that the respondent’s wife spoke Spanish and the majority of her family was originally from the respondent’s country of citizenship, Mexico. The BIA stated that based on these factors the respondent’s wife “should have less difficulty adjusting to live in a foreign country.” The record in the present case shows that the applicant’s spouse is a former national and citizen of Pakistan. According to counsel’s brief, the applicant’s spouse visited Pakistan in May 2001 to partake in her arranged marriage to the applicant. Based on these facts, the applicant’s spouse should have less difficulty in adjusting to culture and residence in Pakistan. Counsel asserts on appeal that conditions in Pakistan make it nearly impossible to provide minimally for the health, education and future employment of the applicant’s U.S. citizen children. However, counsel does not explain, identify, or

document any particular conditions in Pakistan. The AAO notes again that the unsupported assertions of counsel do not constitute evidence. Further, the record contains no information on the potential financial, medical or social hurdles the applicant's spouse would endure if she returned to Pakistan. Therefore, the AAO cannot conclude that the applicant's spouse would face extreme hardship if she returned to Pakistan.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant is refused admission to the United States. 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 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.