

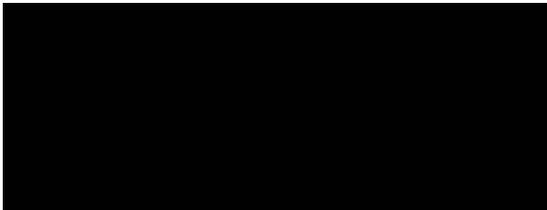


U.S. Citizenship
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FILE:



Office: KARACHI, PAKISTAN

Date: **JUN 11 2009**

IN RE:



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

ON BEHALF OF APPLICANT:

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.

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, 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), Karachi, Pakistan. 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. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 and seeking admission within ten years of his last departure. He is married to a Lawful Permanent Resident. 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).¹

The Officer in Charge concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 27, 2007.

On appeal, the applicant states that the director's decision was one-sided and that he has been a law abiding citizen and paid his taxes.

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.

¹ The AAO notes that the Officer in Charge also denied the applicant's Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal. As the record indicates that the applicant submitted only one fee on appeal, the AAO will not address the denied Form I-212. Pursuant to the Adjudicator's Field Manual (AFM), when the Forms I-212 and the I-601, Application for Waiver of Grounds of Inadmissibility, are filed together, the Form I-601 will be adjudicated first. AFM, Chapter 43.2(C).

The record indicates that the applicant entered the United States in 1993 with a B2 visa, and remained beyond the expiration date of February 6, 1994. He applied for asylum on February 18, 1994, but withdrew his application before the immigration judge on February 20, 1998, and was granted voluntary departure until February 19, 1999. The applicant did not comply with the grant of voluntary departure but remained in the United States until he was removed on November 14, 2004. Therefore, the applicant accrued unlawful presence from February 20, 1999 until his removal in 2004. As the applicant is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant’s waiver request.

The record includes, but is not limited to, a statement from the applicant; a statement from the applicant's spouse; family photographs; tax documentation; various medical records for the applicant and a business certificate.

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

The applicant's spouse asserts that she has been married to the applicant 35 years with little time apart, and that due to the absence of the applicant she has had to support herself emotionally, physically and financially, and that she has had to spend a great deal of money to visit him in Pakistan. She further asserts that the applicant has serious health problems and that she is afraid that if he is excluded from the United States he may die or be seriously disabled due to the lack of adequate health care in Pakistan. She also asserts that she is over 50 years old, needs the applicant's financial help because her English is not good, has never worked outside the home and would find it difficult to find employment. The applicant's spouse also states that she suffers emotionally when her daughter and grandchildren cry for the applicant.

The record does not support the applicant's spouse's assertions that she and the applicant have spent little time apart during their marriage. The applicant has stated throughout the record that he had to leave his family behind in Pakistan. Further, as noted by the Officer in Charge, United States Citizenship and Immigration Services (USCIS) records indicate that the applicant was in the United States from 1993 until 2004, and that the applicant's spouse did not enter the United States until 2003. The record also fails to document that the applicant's spouse is in need his financial support or that she needs to seek employment. The AAO notes that the record contains no documentation that indicates the applicant's spouse has a mental or physical health condition that would require the applicant's presence in the United States.

The record contains several medical documents for the applicant, including records of a 2002 physical examination. An undated letter from [REDACTED], at the Elmhurst Hospital Center, asserts the applicant is his patient and suffers from Diabetes Mellitus and severe osteoarthritis, and needs to attend the Elmhurst Hospital Center for further treatment. [REDACTED] also indicates that the applicant has physical limitations but fails to specify those limitations or how they affect the applicant's ability to function. While the record establishes that the applicant has medical conditions requiring treatment, it does not contain any evidence that the applicant cannot be treated in Pakistan. Moreover, hardship to the applicant is not directly relevant to a determination of extreme hardship in these proceedings, and the record does not demonstrate how the applicant's medical conditions will affect his spouse in the event of his exclusion.

In light of the evidence presented, the record does not support that the applicant's spouse would suffer an extreme hardship if the applicant were excluded and she remained in the United States.

Extreme hardship to a qualifying relative must also be established if he or she accompanies the applicant. In this case, the record does not address whether the applicant's spouse would suffer extreme hardship upon relocation. The applicant's wife does not assert that she cannot relocate to Pakistan with her husband, nor does the record document the impacts of relocation on her. As the

applicant has failed to articulate any negative impacts on his spouse if she were to relocate to Pakistan, the AAO is unable to find that she would suffer extreme hardship if she moved to Pakistan.

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 will face extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse will suffer hardship as a result of the applicant's inadmissibility. However, the record does not distinguish her hardship from that experienced by other spouses separated as a result of inadmissibility and it, therefore, does not rise to the level of "extreme" as informed by relevant precedent. 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). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident spouse as required 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.