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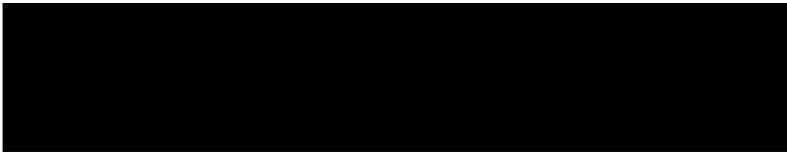
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (INA), 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 Director, California Service Center denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Pakistan who resides in South Ozone Park, New York. The applicant is the beneficiary of an approved Form I-130 petition.¹ The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The record reflects that the applicant is the wife of a U.S. citizen and mother of a U.S. citizen son. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and son.

The district director found that the applicant was unlawfully present in the United States for more than one year. The district director also found that the applicant had failed to establish extreme hardship to her U.S. citizen husband and son and denied the application.

On appeal, counsel asserted that the denial of the application for waiver was incorrect, but otherwise offered no argument pertinent to the applicant's inadmissibility, the availability of waiver, or the appropriateness of granting a waiver, if available, in this case.

Section 212(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

¹ A previous Form I-130 listing the instant applicant as its beneficiary was submitted on September 17, 1993 and approved on December 17, 1993. Approval of that petition was revoked on February 27, 2003. Today's decision is concerned only with a more recent Form I-130, filed November 5, 2004 and approved June 1, 2006. That petition remains approved.

(a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The record contains a printout of USCIS computer records that shows that the applicant was admitted to the United States on August 11, 1995 on a B-2 visitor's nonimmigrant visa. That visa expired on February 10, 1996 and was not renewed.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. Therefore, pursuant to sections 301(b)(3) and 309(a) of the IIRIRA, the applicant's illegal presence began on April 1, 1997 for the purpose of the inadmissibility provision.

On July 24, 1998, the applicant filed a Form I-485 Application to Adjust Status, which terminated her unlawful presence on that date pursuant to Memo. from [REDACTED] Commr., Ofc. of Field Oper., Imm. and Natz. Serv., to Reg. Dirs. et. al, *Unlawful Presence* HQADN 70/21.1.24-P. The applicant had then been unlawfully present in the United States for more than one year. Section 212(a)(9)(B)(i)(II) of the Act, however, requires a subsequent departure to trigger the ten year period of inadmissibility.

The record contains a printout of USCIS computer records that indicates that the applicant entered the United States on August 11, 1999. This indicates that the applicant departed the United States prior to that date. On the date of her departure, the applicant became inadmissible pursuant to section 212(a)(9)(B)(i)(II) for a period of ten years.

The instant record does not, however, show the date of that departure. That date may have been more than ten years ago, but the AAO cannot determine from the evidence in the record whether that ten year period of inadmissibility has tolled. However, because the AAO finds the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a separate period of unlawful presence, it need not make a determination concerning this period.

On a second Form I-485, submitted November 5, 2004, the applicant stated that she had last entered the United States on February 22, 2003, and that her B-2 visa had expired. A stamp on the applicant's passport, a copy of a portion of which is in the file, confirms that the applicant left Pakistan on February 22, 2003. A photocopy of a Form I-94 Departure Record and another printout of USCIS computer records are also in the file and similarly confirm that the applicant entered the United States on February 22, 2003.

On August 29, 2003, the applicant's first Form I-485 Application to Adjust Status was denied, thus rendering the applicant's presence in the United States unlawful.

Thus, the applicant was unlawfully present in the United States from August 29, 2003, when her Form I-485 was denied, until at least November 5, 2004, when she was in the United States and reported that February 22, 2003 was her last entry into the United States. The applicant was therefore again unlawfully present in the United States for more than a year. Again, a departure is necessary to trigger the ten-year inadmissibility provision of section 212(a)(9)(B)(i)(II) of the Act.

Another printout in the file of USCIS computer records indicates that the applicant entered the United States at New York on September 10, 2005 on Flight 711 from Pakistan. This indicates that the applicant departed the United States on some date between November 5, 2004, when she filed her second Form I-485, and September 11, 2005, when she re-entered the United States. The applicant is therefore inadmissible for ten years following that date. Although that date² is not evident from the evidence in the file, it was clearly less than ten years ago. This office finds, therefore, that the applicant is currently inadmissible. The remainder of this decision will be concerned with whether waiver of the applicant's inadmissibility is available and whether it should be granted.

Section 212(i)(1) provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

A waiver of inadmissibility under section 212(i) OR 212(a)(6)(C) of the Act 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 or her child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

² The decision denying the applicant's second Form I-485 states that the applicant left the United States on July 24, 2005. The AAO is unable to find any evidence in the file, however, to demonstrate that was the date the applicant departed the United States.

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 nonexclusive list of 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).

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).

On appeal, counsel stated,

[The applicant] submitted thorough and complete documentation that the U.S. Citizen spouse and U.S. Citizen child would suffer extreme hardship if the waiver were not granted. The decision of [CIS] is incorrect in its interpretation of extreme hardship as it applies to the family of the [applicant].

Counsel provided no other argument pertinent to extreme hardship.

The record contains an affidavit, dated June 27, 2006, from the applicant’s husband. The applicant’s husband stated that he is a United States citizen and that he and the applicant have a United States citizen son. He further stated, “[The applicant and the applicant’s husband] have no family ties outside of the United States,” and that “all ties are here in the United States,” without further explaining those statements. As to the financial impact if the applicant is not granted waiver, the applicant’s husband stated, “[The applicant’s husband] owns his own business, [REDACTED] in Huntington, New York. He would not have such a job opportunity in Pakistan.” The applicant’s husband further stated, “It is well[-]known that medical care in Pakistan is lacking behind to [sic] medical care here in the United States. Medical care in Pakistan is not as advanced.” The applicant’s husband concludes, “Based on the foregoing, it has been shown that the United States Citizen Spouse and child of [the applicant] would suffer extreme hardship if the waiver were denied

and he was forced to relocate with his spouse.” The applicant’s husband did not address the possibility that he and/or his son might remain in the United States.

Pertinent to the applicant’s family’s finances the record contains a February 10, 2005 letter from [REDACTED]; an April 25, 2000 letter from an accountant; and copies of personal tax returns.

The February 10, 2005 from [REDACTED] is on what purports to be company letterhead. That company letterhead states that the company is in Huntington, [sic] New York. That letter states that the applicant’s husband earns \$500 per week at that delicatessen for 50 hours of work per week. The April 25, 2000 accountant’s letter states that the applicant’s husband owns 100% of [REDACTED] from which he draws a salary of \$500. The tax returns provided include copies of the 2001, 2002, and 2003 joint Form 1040 tax returns of the applicant and her husband, and copies of portions of their 1997, 1998, and 1999 tax returns.

The portions of the 1997 tax return provided show that the applicant and his wife declared Line 7 wages of \$10,400 and Line 17 income of \$4,825. A W-2 Form provided shows that all of the Line 7 wages were paid by [REDACTED] to the applicant’s husband. Schedule E shows that the Line 17 income was nonpassive income derived from ownership of [REDACTED], a subchapter S corporation on [REDACTED] in South Ozone Park, New York. Whether the owner of that corporation was the applicant or the applicant’s husband is unknown to the AAO.

The portions of the 1998 tax return provided show that the applicant and his wife declared Line 7 wages of \$5,200 and Line 17 income of \$11,525. No W-2 Form or Schedule E was provided to show the source of that income.

The portions of the 1999 tax return provided show that the applicant and his wife declared Line 7 wages of \$9,750 and Line 12 Business income of \$5,500. A W-2 form provided shows that all of the Line 7 wages were paid by [REDACTED] to the applicant’s husband. No Schedule C was provided to show the source of the business income.

During 2001, the applicant and her husband claimed Line 7 wages of \$26,000 and Line 17 income of \$3,880. A W-2 Form provided shows that [REDACTED] paid all of the Line 7 income to the applicant’s husband. An attached Schedule E shows that all of the Line 17 income was nonpassive income the applicant’s husband derived from his ownership of [REDACTED]

During 2002, the applicant and her husband claimed Line 7 wages of \$26,000, Line 17 income of \$14,584, and Line 21 Other income of \$7,400. A W-2 form provided shows that [REDACTED] paid all of the Line 7 income to the applicant’s husband. An attached Schedule E shows that all of the Line 17 income was nonpassive income the applicant’s husband derived from his ownership of [REDACTED]. Form W-2G, which would have stated the provenance of the Line 21 income, was not provided.

During 2002 the applicant and her husband claimed Line 17 income of \$41,944. They claimed no other income. An attached Schedule E shows that all of the Line 17 income was nonpassive income the applicant's husband derived from his ownership of [REDACTED]

The tax returns do not demonstrate that the applicant had any income during any of the years for which tax returns were provided. The record contains no other evidence related to the financial hardship determination.

In his June 27, 2006 statement, the applicant's husband argued that being forced to leave the United States to join his wife in Pakistan would cause him extreme economic hardship, as it would force him to give up ownership of [REDACTED]. All of the hardships anticipated by the applicant's husband in his statement appear to contemplate his leaving the United States to join his wife in Pakistan, which he is not obliged to do. Because the applicant failed to address the possibility of her husband remaining in the United States without her, she has not demonstrated that, in the event waiver is not approved, her husband could not remain in the United States without undue hardship. She has not, therefore, demonstrated that failure to grant waiver would result in extreme hardship to her United States citizen spouse, the only qualifying relative in this case.

As to the financial hardship that would result from the applicant's husband accompanying her to Pakistan, the applicant's husband has not addressed the possibility that he might be able to operate his business while out of the country. The applicant might also be able to sell his business and purchase or grow a business in Pakistan. In this regard, the applicant's husband stated, in his June 27, 2006 affidavit, that he would not have such an opportunity in Pakistan, but provided no evidence that no such opportunity would be available.

Although the statements by the applicant's spouse are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)). The applicant has not demonstrated that her absence from the United States would occasion financial hardship to her United States citizen spouse, whether or not he accompanied her.

In regard to medical hardship, the applicant's spouse stated that it is well-known that medical treatment in Pakistan is not as advanced as in the United States. No evidence pertinent to that assertion was provided. Again, pursuant to *Matter of Soffici*, 22 I&N Dec. 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)) that conclusory statement, absent evidentiary support, is insufficient to sustain the burden of proof in this matter.

Further, even if the applicant had demonstrated that medical care in Pakistan is inferior to that in the United States, that would be insufficient to show that the quality of care available in Pakistan would be insufficient to accommodate the applicant's family. The applicant provided no evidence, for instance, that her spouse's physical condition precludes his being adequately cared for by the allegedly less advanced medical care available in Pakistan. The applicant failed to demonstrate how that allegedly inferior care would result in hardship to her spouse.

The applicant and counsel submitted no evidence pertinent to any emotional hardship that the applicant's removal from the United States would cause, other than the applicant's husband's conclusory statement that he and the applicant have no family ties in Pakistan. Absent further explanation and supporting evidence, the AAO cannot accept as fact the mere conclusory assertion that neither the applicant nor the applicant's husband has any family ties in Pakistan, nor that the lack of family ties would necessarily occasion hardship to the applicant's husband and son.

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 faces extreme hardship if the applicant is refused admission. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or 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 made clear that it 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 INA § 212(i), 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 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 therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required for waiver under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, address whether this would otherwise be an appropriate case in which to exercise its discretion to grant a waiver.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.