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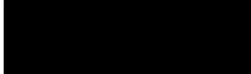


**U.S. Citizenship
and Immigration
Services**

H4



FILE:



Office: ROME, ITALY

Date: JUN 28 2007

IN RE:

Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Rome, Italy, denied the Form I-601, Application for Waiver of Ground of Excludability under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(v). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is 39-year-old native and citizen of Pakistan who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The record reflects that the applicant is the spouse of a native-born U.S. citizen. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his wife. He seeks a waiver of inadmissibility in order to return to the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, the applicant submits a brief, evidence relating to his step-child's custody, and several affidavits from family members and friends. The applicant, through counsel, contends that the district director erred in failing to allow him an opportunity to supplement the record and in not giving appropriate consideration to his claims of hardship. *See* Appellate Brief. In considering this appeal, the AAO has reviewed the record *de novo*.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(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 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 district director found the applicant inadmissible on the basis of his unlawful presence in the United States. The record reflects, and the applicant admits, that he entered without inspection into the United States in 1997 and remained without authorization until he voluntarily departed in 2003. The applicant has thus been unlawfully present in the United States for a period of more than one year and is subject to a 10 year bar to admission. The AAO finds that the applicant is inadmissible as charged. The question remains whether he is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 212(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute.

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. 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).

The applicant's wife, [REDACTED], is a 33-year-old native-born U.S. citizen. The applicant and his wife were married on July 12, 2001. The applicant's wife resides in Kansas with her 14-year-old daughter from a previous relationship, [REDACTED]. The applicant's wife lives near her mother, other family and friends. She is employed as an accountant. The applicant's wife states that the separation from her husband is causing her great suffering. See Letter from [REDACTED] dated September 8, 2005. The applicant's wife claims that she suffers from asthma and depression. *Id.* She also states that she earns a good salary, and that she is concerned that she would not be able to enjoy the same standard of living should she relocate to Pakistan. *Id.* The applicant's wife explains that she cannot take her 14-year-old to Pakistan because, among other things, her daughter's biological father would not allow it. *Id.*; see also Letter from [REDACTED] dated September 8, 2005. The applicant's wife shares custody of her daughter with the biological father, [REDACTED]. *Id.* The applicant further explains that Pakistan is a developing country where her daughter, and herself, would have limited opportunities. See Letter from [REDACTED] dated September 8, 2005. The applicant's wife also maintains that she has visited her husband a number of times, and that her visits impose a great hardship on herself and her daughter. *Id.* The applicant's wife states that she would like to have a baby with the applicant. *Id.* She explains that travel to Pakistan is expensive and unsafe. *Id.* The applicant's wife claims that her husband's inadmissibility creates hardship because she either has to leave her minor daughter alone in the United States or forego being with her husband. *Id.*

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 wife faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In

limiting the availability of the waiver to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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).

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant’s wife rises to the level of extreme. The AAO notes that the applicant’s wife holds a steady job, and earns a good salary. She does not suffer from any unusual medical conditions, and the record does not contain any evidence suggesting that asthma and depression cannot be adequately treated in Pakistan. The AAO notes that the applicant’s wife resides near, and is close with, her mother, other family and friends. She lives with her 14-year-old daughter, who herself is close to the applicant. The AAO has considered the applicant’s wife’s reluctance to relocate to Pakistan, and her inability to relocate her daughter or leave her behind. The AAO notes that, as a U.S. citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The AAO further notes that the applicant’s wife’s concerns about relocating to Pakistan are common to other individuals facing similar circumstances, and do not rise to the level of “extreme hardship.” *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient”).

The AAO has considered the applicant’s wife’s hardship given her decision to remain in the United States and due to her separation from the applicant. While the AAO has carefully considered the impact of the separation resulting from the applicant’s inadmissibility, a waiver is nevertheless not to be granted in every case where separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances”).

The AAO has evaluated the applicant’s wife’s hardship claims individually and in the aggregate. Although the AAO acknowledges the applicant’s wife’s claims that she would experience hardship if she continues to be separated from her husband, the AAO finds that her hardship is typical for any person in her circumstances and does not rise to the level of “extreme” as required by the statute. The AAO finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility, 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.