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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H5



FILE:



Office: ISLAMABAD, PAKISTAN

Date: **AUG 03 2010**

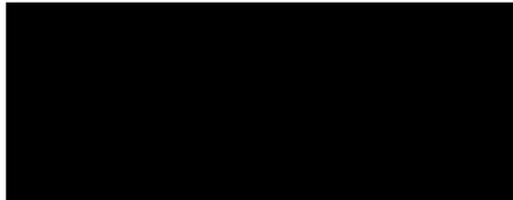
IN RE:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Tariq Syed
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Islamabad, Pakistan. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation and under 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 more than one year and seeking readmission within ten years of his last departure. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Officer-in-Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated April 25, 2007.

On appeal, counsel for the applicant states the factors presented give rise to extreme hardship as set forth in section 212(i) of the Act. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, briefs from previous attorneys; a statement from the applicant's spouse; country conditions reports; medical records; statements from the applicant; a school certificate; employment letters for the applicant; and a travel itinerary. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

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

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-

....

(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.

In the present case, the record indicates that the applicant entered the United States in 1990 at age 15 by using the entry documents of another person. *Attorney's Memorandum in Support of Application For Adjustment of Status*, dated September 7, 2001. The applicant remained in the United States until 1992. *Form I-601, Application for Waiver of Ground of Excludability*. In 1995, the applicant again entered the United States with false entry documents. *Id.*; *Form I-485, Application to Register Permanent Resident or Adjust Status*. The applicant filed an application to adjust his status on April 26, 2001. *Form I-485, Application to Register Permanent Resident or Adjust Status*. The applicant was placed into proceedings before an immigration judge and was granted an order of voluntary departure until March 8, 2002, with an alternate order of removal. *Order of the Immigration Judge*, dated January 7, 2002. The applicant was removed on June 26, 2002. *Form I-205, Warrant of Removal*, dated June 26, 2002. As such, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act for having procured admission through the use of false documents. The applicant also accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until April 26, 2001, the date he filed the Form I-485 application. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining the bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. See *United States Citizenship and Immigration Services Consolidated Guidance on Unlawful Presence*, at 33, dated May 6, 2009. The applicant was removed from the United States on June 26, 2002. *Form I-205, Warrant of Removal*, dated June 26,

2002. The applicant is, therefore, 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(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act and a section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Pakistan or 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 consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Pakistan, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Approved Form I-130, Petition for Alien Relative*. The applicant's spouse has lived her entire life in the United States. *Attorney's brief*, dated June 15, 2006. Her parents, grandmother, sister, and relatives were all born in the United States and live within driving distance of each other. *Id.* She has never been to Pakistan, nor does she have any familial, cultural, or religious ties to Pakistan. *Id.* She fears she will lose critical relationships with her family if she moves to Pakistan. *Statement from the applicant's spouse*, dated December 14, 2005. She is also the primary caregiver for her grandmother and her uncle. *Id.* The applicant's spouse asserts her grandmother suffered a heart attack and a stroke, and she is unable to care for herself, while her uncle has cerebral palsy and epilepsy. *Id.* The AAO notes that while the record includes medical documentation for [REDACTED] it fails to document the relationship between these individuals and the applicant, and to document the specific medical claims made by the applicant's spouse. There is no indication that [REDACTED] are the grandmother and uncle of the applicant's spouse. Going on record without supporting documentary evidence will not meet the

burden of proof of this proceeding. See *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's spouse does not speak the language in Pakistan. *Statement from the applicant's spouse*, dated December 14, 2005; *Attorney's brief*, dated June 15, 2006. As such, she believes she will not be able to further her education in Pakistan. *Statement from the applicant's spouse*, dated December 14, 2005. Additionally, counsel notes that her lack of language abilities would impact her ability to find employment in Pakistan. *Attorney's brief*, dated June 15, 2006. Counsel further states that danger in Pakistan has increased over the years. *Id.* His assertions are supported by country conditions reports included in the record, most notably a travel warning issued in 2010 by the United States Department of State warning U.S. citizens to defer non-essential travel to Pakistan. *Travel Warning, United States Department of State, Pakistan*, dated January 7, 2010; *Country conditions reports*. When looking at the aforementioned factors, particularly the applicant's spouse's lack of familial and cultural ties to Pakistan, her lack of language abilities which would affect her adjustment to Pakistan, as well as the country conditions as documented in the record, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Pakistan.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States. *Approved Form I-130, Petition for Alien Relative*. The applicant's spouse has lived her entire life in the United States. *Attorney's brief*, dated June 15, 2006. Her parents, grandmother, sister, and relatives were all born in the United States and live within driving distance of each other. *Id.* The applicant's spouse details the difficulties and emotional hardship that she is experiencing without the applicant. She states the burden of being separated from the applicant and having her life at a standstill year after year is too much, and that she is worried about the applicant being in an unsafe place. *Statement from the applicant's spouse*, dated December 14, 2005. The AAO acknowledges the travel warning issued in 2010 by the United States Department of State which mentions that there were over 200 terrorist attacks according to the 2008 Department of State Human Rights Report for Pakistan, details violence in Karachi, and warns U.S. citizens to defer non-essential travel to Pakistan. *Travel Warning, United States Department of State, Pakistan*, dated January 7, 2010; *Country conditions reports*. The AAO notes that the applicant resides in Karachi. *Applicant's Form DS-230*. As such, the applicant's spouse's fear for his safety is credible and she would be unable to visit the applicant. When looking at the aforementioned factors, particularly the inability of the applicant's spouse to visit the applicant due to a travel warning issued by the United States government, as well as the emotional difficulties that accompany a permanent separation, and her credible fear for the applicant's safety in Pakistan, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior unlawful presence and misrepresentation for which he now seeks a waiver, as well as his unauthorized employment while in the United States. The favorable and mitigating factors are the extreme hardship to his spouse if he were refused admission and his supportive relationship with his spouse as documented by evidence submitted into the record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) and 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 met that burden. Accordingly, the appeal will be sustained. The AAO notes that the Officer-in-Charge denied the applicant's Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal in the Form I-601 decision. The record does not contain an appeal from the Form I-212 denial. Therefore, a decision will not be issued by the AAO for the Form I-212.

ORDER: The appeal is sustained.