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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**

H6

FILE: [REDACTED] Office: PHILADELPHIA, PA

Date: FEB 24 2010

IN RE: [REDACTED]

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 PETITIONER:

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).

Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who has resided in the United States since August 8, 1999, when he entered without inspection, and last entered the United States on August 23, 2005 with advance parole. 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. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative and 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 remain in the United States with his wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated June 9, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife would suffer extreme hardship if the applicant were removed from the United States and submitted an affidavit from the applicant's wife, a psychological evaluation, and medical records in support of this assertion. Documentation submitted with the waiver application includes a letter from the applicant, a letter from the applicant's wife's doctor, income tax returns, and affidavits from friends and family members. The entire record was reviewed and considered in arriving at a decision on the appeal.

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-

(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 . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

(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 [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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a fifty-two year-old native and citizen of Pakistan who has resided in the United States since August 1999, when he entered without inspection. He accrued unlawful presence in the United States until he filed an application for adjustment of status on April 30, 2001. That application was denied on December 2, 2002 and he filed a second application for adjustment of status on March 22, 2004. The applicant departed the United States on June 7, 2005 and reentered with an advance parole document on August 23, 2005. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a period of ten years after his June 2005 departure because he was unlawfully present in the United States for a period on one year or more. The applicant married his wife, a fifty-one year-old native of Guyana and citizen of the United States, on July 11, 2003. The applicant and his wife reside in Philadelphia, Pennsylvania.

The applicant's wife states that she would have extreme difficulty if she relocated to Pakistan with the applicant because she does not speak the language and would have difficulty communicating and finding employment, and she could not leave her mother, who suffers from various medical conditions and relies on her for assistance. *See Affidavit of [REDACTED]* dated July 7, 2006. She further states that the U.S. State Department advises U.S. Citizens against going to Pakistan and she is "frightened to relocate to such an environment." The AAO takes notice of a recent Travel Warning issued by the Bureau of Consular Affairs of the U.S. Department of State. The warning states,

The U.S. State Department is warning U.S. citizens of the risks of travel to Pakistan. This Warning replaces the Travel Warning dated June 12, 2009, and updates information on security incidents and reminds U.S. citizens of ongoing security concerns in Pakistan. Pakistani military forces have engaged in a campaign against violent extremist elements across many areas of the Federally Administered Tribal Areas (FATA) and parts of the North-West Frontier Province (NWFP). Terrorists blame the Pakistani and the U.S. governments for the military pressure on their traditional havens and the death of Tehrik-e-Taliban Pakistan (TTP) leader Baitullah Mehsud in NWFP in August 2009. In response, militants are seeking to increase their attacks on civilian, government, and foreign targets in Pakistan's cities.

The presence of Al-Qaida, Taliban elements and indigenous militant sectarian groups poses a potential danger to American citizens throughout Pakistan, especially in the western border regions of the country. Flare-ups of tensions and violence in the many areas of the world also increase the possibility of violence against Westerners. Terrorists and their sympathizers regularly attack civilian, government, and foreign targets, particularly in the NWFP. . . . *U.S. Department of State, Travel Warning – Pakistan*, January 11, 2010.

The AAO finds that the applicant's wife, who has two adult children residing in the United States and has been a U.S. Citizen since 2002, would suffer extreme hardship if she relocated to Pakistan due to her lack of ties to the country, separation from family member in the United States, and dangerous conditions that put U.S. citizens at risk throughout the country.

The applicant's wife states that she relies on the applicant for assistance in running her store, which she cannot run on her own due to injuries suffered in a car accident in 2000. She states that the applicant is her best friend and the thought of being separated from him has caused her to suffer from anxiety and depression. *See Affidavit of [REDACTED]* dated July 7, 2006. In support of this assertion counsel submitted a psychological evaluation of the applicant's wife prepared by [REDACTED]. The evaluation states that that the applicant's wife is anxious and depressed over the fact that her husband might have to leave the United States and reported depressive symptomology including difficulty focusing and concentrating, sleep disturbance, and persistent sadness. *Psychological Evaluation prepared by [REDACTED]* dated June 26, 2006. The evaluation further states that the applicant's wife is suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood "as a direct result of her fear that her husband, [REDACTED], will have to leave the United States." *Psychological Evaluation prepared by [REDACTED]*

The input of any mental health professional is respected and valued in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of the applicant's wife, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife or any history of treatment for her depression or anxiety. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight that would result from an established relationship with the psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, there is no evidence submitted with the waiver application or appeal that [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of adjustment disorder with anxiety and depressed mood.

The applicant's wife states in her letter that she relies on the applicant in many ways and the thought of being separated from him has left her depressed. *See Affidavit of [REDACTED]* The evidence on the record does not establish, however, that any emotional difficulties the applicant's wife would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress caused by the prospect of being separated from her husband is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 applicant's wife states that if the applicant were removed she would not be able to run her store and she cannot conduct all of the physical activities required at the store, including lifting boxes, stocking inventory, and standing for a long period of time, because of cervical spine injuries. *See Affidavit of [REDACTED]*. She states that she cannot bend over to pick things up or lift heavy objects without excruciating pain, and the only person that is able to help her is the applicant, and not her adult children, one of whom lives in Philadelphia. *Affidavit of [REDACTED]* A letter from the applicant's wife's doctor states that she is under his care for cervical spine injuries arising from a February 2000 motor vehicle accident and that the injuries prevent her from engaging in strenuous physical work. *See letter from [REDACTED]* dated March 22, 2005. The letter further states that the applicant assists his wife with stocking and other activities she cannot carry out and provides her with emotional and physical support, and no other person can fulfill these roles. Counsel also submitted with the appeal copies of medical records from March to October 2000 stating that the applicant's wife was suffering from neck and back pain, was being treated with medication, and had a guarded prognosis.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's wife's condition is so serious that she would suffer extreme hardship if she were to remain in the United States without the applicant. The record contains a brief letter from the applicant's physician stating that she cannot perform certain tasks due to cervical spine injuries, but it provides no further detail about the severity of her condition, any treatment being received, or the prognosis for

recovery. Letters from 2000 state that her prognosis was guarded at that time, but the record contains no more recent information on her prognosis. Further, although the applicant's wife states she cannot run the store without the applicant, the record does not explain who provided this assistance before their July 2003 marriage or whether the store has any other employee. The evidence on the record is insufficient to establish that the applicant's wife suffers from a serious medical condition that would result in extreme physical or financial hardship if the applicant were removed from the United States. Any financial impact of the loss of the applicant's assistance at his wife's store therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The emotional and financial hardship the applicant's wife would experience if he is removed and she remains in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.<sup>1</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO notes that the record contains a Form I-824, Application for Action on an Approved Application or Petition which indicates that that applicant may have returned to Pakistan. If this is true, and he has not returned to the U.S., the waiver application is moot as the Form I-485 on which it is based is no longer valid. The applicant can file a new Form I-601 when he applies for a visa overseas.