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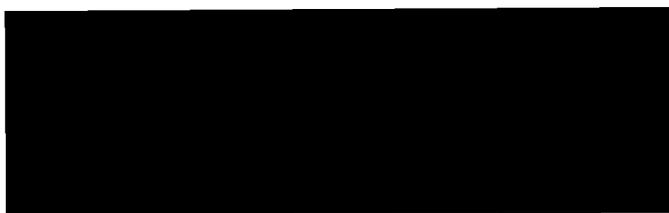
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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HL



FILE:



Office: ISLAMABAD

Date:

**MAR 10 2010**

IN RE:



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

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Officer in Charge (OIC), Islamabad, Pakistan, 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.

In a decision dated March 5, 2007 the OIC found that the applicant submitted fraudulent documents in order to obtain an F-1 visa, and that he accrued unlawful presence in the United States from December 1998 until October 2005. The OIC found the applicant 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 longer than one year and seeking admission within ten years of his last departure. The OIC also found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for having obtained an immigration benefit through fraud or a material misrepresentation.

The applicant 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), and section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1), in order to reside in the United States with his fiancée. The OIC also concluded that the applicant had failed to establish that the bar to admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly.

In the section reserved to state the basis of the appeal, the Form I-290B Notice of Appeal states,

The decision of the [OIC] is factually and legally in error.

The evidence indicates that my fiancée will suffer extreme hardship should I not be permitted to join her in the United States.

Further evidence of extreme hardship will be presented with my brief on appeal, that will be submitted within 60 days.

No further evidence or argument was submitted with the appeal or subsequently.

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-

....

(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 of 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.

....

(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.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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)(1) of the Act 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 . . .”

The record shows that the applicant was admitted to the United States on August 19, 2001, after using a fraudulent Form I-20 Certificate of Eligibility for Non-Immigrant (F-1) Student. On February 18, 2004, an immigration judge apparently made a finding that the applicant violated his status as a consequence of that fraud, and the applicant was granted voluntary departure, the terms of which required him to leave the United States on or before June 17, 2004. The applicant voluntarily departed the United States on June 6, 2004.

If an immigration judge makes a determination of nonimmigrant status violation in exclusion, deportation, or removal proceedings, unlawful presence begins to accrue the day after the immigration judge's order. Memo. from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Policy and Strategy, U.S. Citizenship and Immigration Services, to Field Leadership, *Consolidation of*

*Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* 3, 4 (May 6, 2009).

The applicant began to accrue unlawful presence for the purpose of section 212(a)(9)(B)(i)(I) and section 212(a)(9)(B)(i)(II) of the Act on February 19, 2004, the day after he was granted voluntary departure. His unlawful presence in the United States ended on June 6, 2004, when he departed. He was not unlawfully present in the United States for a period greater than one year, nor even for a period greater than six months, and never became inadmissible pursuant to either section 212(a)(9)(B)(i)(I) or section 212(a)(9)(B)(i)(II) of the Act. The AAO withdraws the OIC's finding on that issue.

However, counsel has not disputed the applicant's inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act for committed fraud or made a material misrepresentation in seeking an immigration benefit, and the AAO affirms the finding of the OIC that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Waiver of in admissibility pursuant to section 212(a)(6)(C)(i) of the Act is addressed in section 212(i)(1) of the Act. Waiver of inadmissibility under section 212(i)(1) 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 parent, spouse, or by extension, fiancé or fiancée of the applicant. Hardship to the applicant is not directly 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 fiancée 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).

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 (BIA) set forth a nonexclusive list of 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 also held that:

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts 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 (9<sup>th</sup> Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *see also 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she joins the applicant to live in Pakistan and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In a letter dated July 31, 2006 counsel noted, correctly, that although section 212(a)(6)(C)(i) of the Act and section 212(i)(1) of the Act only refer to waiver of inadmissibility for an applicant who is the spouse, son, or daughter of a U.S. citizen or Lawful Permanent Resident (LPR), pursuant to 9 FAM 41.81 N9.3 those sections also provide waiver availability based on extreme hardship to the fiancé or fiancée of a U.S. citizen or LPR.

In a letter dated August 3, 2006, the applicant’s fiancée stated that she met the applicant during March 2003 and became formally engaged to him on March 19, 2004. She stated that they have a very close and loving relationship, that their separation has caused her great grief and anxiety, and that, although her father is currently supporting her, the applicant will support her when they marry. Although the applicant’s fiancée implied that throughout their engagement she has lived in Florida and the applicant has lived in New Jersey and Pakistan, she stated that she cannot imagine what life would be like without the applicant. The applicant’s fiancée asserted that her father is not in good health and implied that he may, therefore, become unable to support her. The applicant’s fiancée did not further describe her father’s health concerns and provided no evidence in support of her assertion

pertinent to her father's ill health. The applicant's fiancée did not address the possibility of her moving to Pakistan to live with the applicant. The record contains no other evidence pertinent to hardship that denial of the waiver application would cause to the applicant's fiancée.

In his July 31, 2006 letter, counsel reiterated many of the applicant's fiancée's assertions and, in addition, explicitly stated that because of his poor health the applicant's fiancée's father may not be able to provide for her much longer. Counsel also asserted that conditions in Pakistan are poor, which counsel stated is sufficient in itself to demonstrate that denial of the waiver application would cause extreme hardship to the applicant's fiancée. Counsel provided no evidence pertinent to his assessment of conditions in Pakistan.

As to financial hardship, there is no evidence that the applicant has ever supported his fiancée. Although his fiancée stated that the applicant "has a good job waiting for him," there is no evidence in the record to corroborate that assertion. The applicant's fiancée stated that she intends to seek a teaching certificate, and counsel stated that she would be unlikely to be able to pursue that goal unless the applicant is accorded waiver of his inadmissibility, but the evidence in the record does not support that assertion. Although the applicant's fiancée and counsel indicated that the applicant's fiancée's father's health may soon preclude his supporting the applicant's fiancée, the record contains no evidence to corroborate the assertion that he may soon be unable to work and no evidence pertinent to the family's finances exclusive of the applicant's fiancée's father's income. Although the failure to realize the benefit of her fiancé's potential income may constitute some degree of hardship to the applicant's fiancée, the evidence in the record does not demonstrate that foregoing that anticipated income will cause extreme hardship to the applicant's fiancée.

The remaining hardship factor raised by the applicant's fiancée and counsel is the emotional hardship that will result to the applicant's fiancée if the applicant remains in Pakistan and his fiancée remains in the United States.

In nearly every qualifying relationship, whether between husband and wife, parent and child, or fiancé and fiancée, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, 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 plain 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.

Separation from one's fiancé or fiancée is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in sections 212(a)(6)(C)(i) and 212(i)(1) of the Act, the hardship must be greater than the normal, expected hardship involved in such cases.

The AAO acknowledges that the applicant's fiancée is experiencing hardship based on her separation from the applicant. The record fails, however, to demonstrate that the continued separation of the applicant from his fiancée will cause her to suffer *extreme* hardship.

Further, other than counsel's abstract assertions pertinent to conditions in Pakistan, the record contains no indication that the applicant's fiancée would suffer by joining him there. The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof.

Being obliged to leave the country where one chooses to live necessarily entails some degree of hardship. The record does not demonstrate, however, that if the applicant's fiancée moves to Pakistan to be with the applicant she will suffer extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that if the applicant remains in Pakistan the applicant's fiancée will experience extreme hardship, whether she chooses to live in Pakistan with him or chooses to live in the United States without him. The evidence does not show that the 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 failed to establish extreme hardship to his U.S. citizen fiancée as required under section 212(i)(1) 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(i)(1) 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.