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



U.S. Citizenship
and Immigration
Services

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H6

FILE:

Office: ROME, ITALY

Date:

MAR 10 2010

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.

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 waiver application was denied by the District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Pakistan who 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 [REDACTED] a citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, July 31, 2007. The applicant filed a timely appeal.

On appeal, counsel asserts that the Department of Homeland Security (DHS) misconstrued the submitted evidence in stating that [REDACTED] did not demonstrate "that her husband would suffer extreme hardship." Counsel contends that denial of the waiver application would result in extreme hardship to [REDACTED] because she must either continue her life without her husband or follow him to a potentially life threatening situation in Pakistan. He states that she financially supports her husband because he is unable to find steady work in Pakistan, and that she therefore cannot afford to live alone or attend school. He maintains that [REDACTED] has chronic depression, dysthymia, and post traumatic stress disorder and cannot afford medical treatment. Counsel states that [REDACTED] had a difficult life and needs the daily emotional support of her husband. Counsel asserts that [REDACTED] has no ties to Pakistan and tried living there, but was unable to stay due to its political, cultural, and economic climate. He conveys that [REDACTED] would not receive proper treatment for her mental health problems if she lived in Pakistan because the applicant is unemployed.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in 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 . . . 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.

....

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant accrued unlawful presence from March 2001, when he entered the United States without inspection, until September 2005, when he left the country and triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act. That section provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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 waiver under section 212(a)(9)(B)(v) 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 an applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED], the applicant’s U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant’s qualifying relative and include 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. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The trier of fact considers the entire range of hardship factors in their totality and then determines “whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant’s spouse must be established in the event that she remains in the United States without the applicant, and alternatively,

if she joins him to live in Pakistan. A qualifying relative is not required to reside outside of the United States based on the denial of an applicant's waiver request.

The psychological evaluation of [REDACTED], dated October 6, 2006, by [REDACTED] conveys the following. [REDACTED] experienced devastating events in her life. When she was approximately eight years old, her family home was burned to the ground and shortly thereafter her father died of cancer. She grew up in a dysfunctional family with siblings who have self-destructive behaviors. While she was young, four of her infant nieces and nephews died. When [REDACTED] was approximately 12 years old she was sexually assaulted and about two years later was unknowingly fondled while sleeping at a friend's house. She left school after becoming pregnant and had an abortion. [REDACTED] is completing her Graduate Equivalency Diploma and hopes to attend college. She has psychiatric issues: posttraumatic stress disorder, depression, and dysthymia. [REDACTED] must live with a friend in order to financially support her husband. [REDACTED] husband grew up in poverty. She and her husband have a strong and caring relationship, and she emotionally depends on him. She lived with her husband in Pakistan from November 2005 until August 2006, and could not continue living there because it is too different from the United States. Wages in Pakistan are low and the applicant has not completed a high school education. There is a shortage of physicians and competent medical care and the status and safety of women is not at the same level as in the United States. Pakistan has a high rate of unemployment, poverty, and crime, and its social and political strife make life there for an American unsafe.

In her statement dated April 14, 2007, [REDACTED] states that she has a close relationship with her husband. She indicates that when she was in Pakistan with her husband she saw he lived in an unsafe, unstable environment. She asserts that he has no supportive family the way she does, and that it "was very hard and difficult trying to pay our bills and support us both in Pakistan. Now I am working and paying most of our bills. I am able to send my husband some money."

Family separation must be considered in determining hardship. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States"). However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

[REDACTED] conveys that the applicant is unable to support himself so [REDACTED] sends him funds, and that wages in Pakistan are low and that the applicant "has not even completed a high school education." However, the immigrant visa application reflects that the applicant attended the Government High School in Karachi from 1987 to 1993 and [REDACTED], a secondary school, from 1993 to 1998, which attendance suggests at the very least the completion of high school. Furthermore, the immigrant visa application indicates that the applicant is self-employed. At his

immigrant visa interview on June 8, 2007, the applicant conveys that he owns a multi-business firm (real estate and non-governmental organization) in Pakistan. In view of the applicant's self-employment, the assertion of extreme financial hardship to [REDACTED] if she remains in the United States without her husband carries less weight in the hardship analysis. In addition, the AAO notes that no corroborating evidence of money transfers or of [REDACTED] income and expenses has been submitted into the record to demonstrate financial hardship.

[REDACTED] evaluation describes traumatic events in [REDACTED] life, and he indicates that [REDACTED] depends on her husband emotionally. However, the record suggests that [REDACTED] was not made aware that the applicant was charged with assaulting [REDACTED] on May 1, 2003, "by grabbing her by the throat and punching her about the face with a closed fist causing bruises to her jaw, eye, ear, and forehead." Although the case was dismissed, the director indicated in his decision that [REDACTED] did not explain the incident. We note that she also has provided no explanation on appeal. [REDACTED] maintains that she has a close relationship with her husband and will experience extreme emotional hardship if separated from him. However, her assertion of having a close relationship in which she receives constant emotional support from her husband loses credibility due to the incident in May 2003 and her failure to explain what occurred.

In considering all of the hardship factors alleged, which factors are the traumatic events in [REDACTED] life, her close relationship with her husband, her psychiatric issues, and her financial hardship, AAO finds that when those factors are combined they fail to demonstrate that she will experience extreme hardship if she remains in the United States without her husband. Although [REDACTED] indicates that she has financial hardship due to supporting her husband, she has provided no documentation corroborating her financial hardship such as her income, expenses, and the money transfers to her husband. In addition, the applicant is self-employed, owning a multi-business firm in Pakistan. [REDACTED] close and supportive relationship with her husband carries less weight due to the unexplained assault charge and her failure to inform [REDACTED] of the charge and, apparently, of other facts as well. Consequently, [REDACTED] has not adequately demonstrated how her emotional hardship due to separation from her husband is unusual or beyond that which is normally to be expected from an applicant's bar to admission. When the combination of hardship factors is considered in the aggregate, they fail to establish extreme hardship to [REDACTED] if she remained in the United States without her husband.

With regard to joining her husband to live in Pakistan, [REDACTED] indicates that she lived with her husband in Pakistan for ten months and felt that he lived in an unsafe, unstable environment. [REDACTED] conveys that Pakistan has high unemployment, poverty, and crime, and high social and political strife, which factors indicate that, as an American, [REDACTED] would be at risk. [REDACTED] indicates that the country conditions in Pakistan are described by the U.S. Department of State. In its Travel Warning on Pakistan, the U.S. Department of State conveys that American citizens throughout Pakistan, and especially in the Federally Administered Tribal Areas and the North-West Frontier Province (NWFP), are regularly attacked by terrorists and their sympathizers, and that the Government of Pakistan has heightened security measures, particularly in the major cities. U.S. Department of State, Bureau of Consular Affairs, Travel Warning, Pakistan (January 7, 2010). According to the record, the applicant lives in Abbottabad, which is a city located in the NWFP of Pakistan. In view of [REDACTED] having spent nearly her entire life in the United States and her lack of knowledge of the customs, culture, and language of Pakistan, and in consideration of her status as

a woman living in a predominately Muslim country and the risks associated in living in the NWFP, the AAO finds that the combination of those factors demonstrate that she would experience extreme hardship if she joined her husband to live in Pakistan.

The applicant has demonstrated extreme hardship to his spouse if she were to join him to live in Pakistan. However, he has not established that she would experience extreme hardship if she remained in the United States without him. Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 12(a)(9)(B)(v) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose is 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(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.