

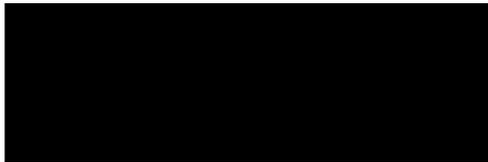
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



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DATE: **JUN 29 2011** Office: NEW DELHI, INDIA File:

IN RE: Applicant:

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

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan. He was found to be inadmissible to the United States pursuant to 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 one year or more and seeking admission within ten years of his last departure.* He is married to a United States citizen. He 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 27, 2009.

On appeal, counsel for the applicant states that the the Field Office Director's decision failed to consider all the factors demonstrating extreme hardship. *Form I-290B*, dated March 18, 2009.

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-

....

(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.

....

The record indicates that the applicant entered the United States without inspection in February 1992. He subsequently filed an application for asylum on November 22, 1993. That application was denied, the applicant was entered into removal proceedings and on April 16, 2003, he was removed from the United States. The applicant accrued unlawful presence from November 6, 2001, the date his asylum application was denied, until April 16, 2003, the date he was removed from the United States. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; statements from the applicant; country conditions materials; medical data records pertaining to the applicant's spouse; photographs of the applicant and his spouse; financial records such as pay stubs.

W-2 forms and tax returns; and documents filed in relation to the applicant's asylum application, Form I-130 and Form DS-230.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or

inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[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) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant asserts the applicant’s spouse will experience cultural, economic, emotional and medical hardship upon relocation. *Brief in Support of Appeal*, dated March 19, 2009. He explains that the applicant’s spouse has no family ties in Pakistan, that she fears she would not be able to practice her religion in Pakistan and would be the victim of persecution due to her religion. He states that she fears the environment in Pakistan due to political strife and discrimination, and that upon previous travels to Pakistan she fell ill due to the environmental conditions there.

He asserts that the applicant’s spouse has shown evidence of a hysterosalpingogram, peptic ulcer disease, epilepsy, laparoscopy, hydrotubation, bilateral wedge resection and myomectomy. He also states that due to stress over the possibility of relocation she has suffered headaches, loss of sleep, poor concentration and depressive mood.

Counsel asserts the applicant has worked hard to achieve her current position of employment and should not have to give that up by relocating to Pakistan, and that it would be a hardship for her to not have access to fertility treatments available in the United States.

The applicant's spouse has submitted a statement which includes the assertions made by counsel and discusses the impacts of separation from her U.S. family if she were to relocate to Pakistan.

The record supports that the applicant's spouse has significant family ties in the United States, and that she does not have family ties in Pakistan. The AAO can also accept that she does not speak the language of Pakistan and would experience some cultural challenges upon relocation. The AAO will give due consideration to these common impacts when determining overall hardship upon relocation.

The record includes country conditions materials, including the Country Report on Human Rights Practices, published by the U.S. State Department's Bureau of Democracy, Human Rights and Labor, February 25, 2009, and the CIA's World Factbook section on Pakistan. As noted by the State Department report, Pakistan does not have any laws which bar the practice of Christianity, or the teaching of it to children in one's own home. Although the AAO recognizes that Pakistan is not a western country and that its primary religion is Islam, general materials on national human rights statistics are not enough to demonstrate that a qualifying relative will experience discrimination or be a victim of religious crime simply because they do not adhere to Islam. Nonetheless, the AAO will give some consideration to the fact that the applicant's spouse has resided in the United States for a significant period of time and that relocating to Pakistan would pose a cultural challenge to her.

Counsel has asserted that the applicant's spouse has experienced several medical conditions, but it would note that many of the conditions listed by counsel, a hysterosalpingogram, peptic ulcer disease, epilepsy, laproscopy, hydrotubation, bilateral wedge resection and myomectomy, were actually individual medical procedures and were related to infertility treatments. The record contains a number of medical records, but many of these records are in the form of raw data. The AAO is not qualified to interpret raw medical data, and cannot draw conclusions from lab reports or test results in order to corroborate a factual assertion. The applicant's spouse noted that she has not experienced any symptoms of epilepsy since 1988. There is no objective evidence, such as a statement from a medical practitioner, which indicates that the applicant's spouse is experiencing any ongoing medical condition, or the degree to which any such condition impacts the applicant's spouse. Although the record shows that the applicant's spouse suffered from infertility issues and has undergone fertility treatments, counsel has not established that this is considered a hardship factor and the record does not contain any documentation that the applicant's spouse would not be able to receive treatment for infertility in Pakistan. As such, the AAO cannot determine that the applicant's spouse is experiencing any medical hardship or would suffer any impact from relocation to Pakistan due to any medical condition.

When the hardship factors asserted on appeal are considered in aggregate, the combined impacts of separation from her U.S. family, some acculturation difficulties based on her long term residence in the United States, her lack of family ties in the United States and her reaction to the environmental

conditions in Pakistan, are sufficient to establish that she would experience uncommon hardship rising to the level of extreme hardship upon relocation.

With regard to hardship upon separation, counsel has asserted that without the applicant present the applicant's spouse will experience financial and physical hardship. *Brief in Support of Appeal*, dated March 19, 2009. He states that the applicant's spouse is unable to pursue her goals of becoming a mother and has struggled financially. He also states that she has experienced depressive symptoms and emotional despair due to the applicant's inadmissibility.

The applicant's spouse has submitted a statement which makes similar assertions.

As discussed above, there is insufficient evidence to establish that the applicant's spouse is experiencing significant medical hardship which results in an impact on her daily life. Counsel has failed to provide any source of legal authority that the inability to pursue fertility treatments in the United States is an uncommon hardship factor, nor has counsel established that it would cause uncommon hardship to the applicant's spouse. While the AAO sympathizes with the applicant's spouse's desire to become a mother, the inadmissibility provisions were not set up so that qualifying relatives could "pursue their dreams" or continue to enjoy the lives they had achieved in the United States. *Shooshtary v. INS*, 39 F.3d 1049, 1051 (9th Cir. 1994).

The AAO accepts that the applicant's spouse will experience some emotional impact due to the applicant's temporary bar, due to expire in April 2013. However, there is insufficient evidence in the record to establish that the emotional impacts on the applicant's spouse rise above those commonly experienced by the relatives of inadmissible aliens who remain in the United States.

With regard to financial hardship, the AAO notes that the record does not contain any current documentation of the applicant's spouse's income or her monthly financial obligations. Without evidence to support these assertions the AAO cannot determine the severity of any financial impact on her or make a determination that the financial impact of the applicant's departure rises above the norm.

Even when the hardship factors asserted on appeal are considered in the aggregate, they fail to establish that the applicant's spouse would experience uncommon impacts rising to the level of extreme hardship if she remained in the United States.

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 spouse faces extreme hardship if the applicant is refused admission. U.S. court decisions 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 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. 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. 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(a)(9)(B)(v) 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.