



H 2

U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

FILE: [Redacted]

Office: San Francisco

Date:

IN RE: Applicant:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of 18 NOV 2002
the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT:

[Redacted]

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India 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 attempted to procure admission into the United States by fraud or willful misrepresentation in July 1991. In May 1997 the applicant married a native of the Philippines who became a naturalized U.S. citizen in January 2001. The applicant is the beneficiary of an approved Petition for Alien Relative. He seeks the above waiver in order to remain in the United States with his wife and U.S. Citizen child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

The record reflects that counsel filed a Motion to Stay Deportation on December 15, 2001, in the Ninth Circuit Court of Appeals. The record does not contain a decision on that motion.

On appeal, counsel discusses the hardship of the applicant's spouse having to maintain two households if she remained in the United States, the need for both of their incomes to meet living expenses, the impossibility for her to move to India, the presence of her entire family in the United States, and the custody of her son by a former marriage. Counsel makes reference to physician's statement that the applicant's spouse suffers from panic attacks and clinical depression.

The record reflects that the applicant arrived at San Francisco Airport in August 1991, without documentation, claiming to be Balbir Singh from Amritsar, India. On October 8, 1991, the applicant conceded inadmissibility to the immigration judge and filed a Request for Asylum under section 208 of the Act, 8 U.S.C. 1158, using his alias. His true name starts to appear on documentation dated as early as April 20, 1992.

On July 29, 1992, the applicant's request for asylum and withholding of deportation was denied. On February 22, 1994, the Board of Immigration Appeals (BIA) remanded the applicant's record for reconstruction. On May 28, 1997, the immigration judge denied the applicant's Application for Asylum and Withholding of Deportation in a *de novo* hearing and ordered the applicant

excluded and deported. On November 8, 2001, the BIA dismissed an appeal of the immigration judge's decision rendering that decision final.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) 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) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). The court held in INS v. Jong Ha Wang, 450 U.S. 139 (1981), that the mere showing of economic detriment to the qualifying family members is insufficient to warrant a finding of extreme hardship.

The record contains a February 4, 2002 evaluation of the applicant's spouse by Francisco Q. Ponce, Ph.D. While the evaluation makes note of past depression and panic attacks it also states that she was prescribed medication for these conditions. Dr. Ponce was not the treating physician for these past occurrences and his evaluation is based on a conversation with the applicant and his spouse. There is no documentation in the file specifically related to the depression or panic attacks that indicate the severity or frequency. Dr. Ponce's evaluation is not sufficient to show hardship beyond that experienced by any family facing deportation.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's wife (the only qualifying relative) that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. Hardship to the applicant himself or to his child is not a consideration in section 212(i) proceedings.

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.

It is further noted that, as the applicant has been issued a final order of deportation, he will need to request permission to reapply for admission using Form I-212.

The burden of proving eligibility in this proceeding 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.

ORDER: The appeal is dismissed.