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U.S. Citizenship  
and Immigration  
Services

H2

[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date:

APR 02 2004

IN RE:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[Redacted]

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.

Robert P. Wienfann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized citizen of the United States and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with his spouse.

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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the District Director, dated January 7, 2002.

On appeal, counsel contends that the applicant has established extreme hardship to his spouse and the fraud for which the waiver is required does not outweigh the favorable factors in the application. *See* Form I-290B, dated February 1, 2002.

In support of these assertions, counsel submits a copy of the U.S. birth certificate of the applicant's child; a brief, dated February 16, 2002; a declaration of the applicant's spouse, dated February 13, 2002; a copy of the college transcript of the applicant's spouse; copies of medical records of the applicant's spouse; an affidavit of the applicant, dated December 12, 2001; an affidavit of the applicant's spouse, dated December 12, 2001; a letter of support, dated December 5, 2001; a letter verifying the employment of the applicant and copies of financial and tax documents for the couple. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) 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 provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], 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 [Secretary] 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.

The record reflects that the applicant procured entry into the United States on or about December 27, 1990, with an Indian passport and United States visitor visa in the name of Amarjit Singh. The applicant

subsequently applied for legalization and claims that he was paroled into the United States on July 8, 1997, based upon that pending application.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. 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).

Counsel asserts, "It is a violation of established Service [now Citizenship and Immigration Services (CIS)] policy to use a truthful statement made during an interview as the basis for denying [an applicant's] application for a waiver of his ground of inadmissibility." *See Letter from James Canfield*, dated February 16, 2002. The assertion of counsel is unpersuasive. The decision of the district director does not deny the applicant's waiver based on his admission of fraud. Rather, the district director found that the applicant requires a waiver of inadmissibility owing to his willful misrepresentation and denied the waiver based on the applicant's failure to establish extreme hardship imposed on his U.S. citizen spouse as a result of his inadmissibility. The district director, therefore, did not reach the question of whether or not the unfavorable factors present in the application outweigh the favorable ones.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel asserts that the applicant's wife would face extreme hardship if she relocated to India in order to remain with the applicant. Counsel contends that the applicant's spouse has no family ties outside of the United States and that leaving would deprive her of close familial relationships she enjoys in the United States. *See Letter from [REDACTED]* Counsel further contends that the applicant's spouse needs to remain in the United States to maintain access to necessary medical care as she suffers from hearing loss and frequent broken bones and the medical care available in India will not suffice to treat her conditions. *Id.*

Counsel does not establish extreme hardship to the applicant's wife if she remains in the United States in order to maintain her close familial ties and access to suitable medical care. The AAO notes that, as a naturalized U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states that she will undergo financial hardship if separated from the applicant. Counsel indicates that the applicant's spouse is dependent on the applicant for her employment. *Id.* The record establishes that the applicant's spouse works as a receptionist in the applicant's business. The record further demonstrates that the applicant's spouse had difficulty obtaining her degree in college, but that she is certified as a medical office specialist. *Id. See also Solano Community College Transcript for Mandip K. Singh*, dated January 28, 2002. The record does not establish

that the applicant's spouse will be unable to support herself and their child financially in the absence of the applicant. Further, the record does not demonstrate that the applicant cannot contribute financially to his wife and child's expenses from a location outside of the United States. Moreover, the AAO notes that 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.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS*, *supra*, held further that 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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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) of the Act, the burden of proving eligibility remains entirely 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.