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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]

Office: NEWARK, NJ

Date: APR 01 2005

IN RE: [Redacted]

PETITION: 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 PETITIONER:

[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. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Newark, New Jersey, 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 pursuant to 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 sought to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

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. *Decision of the District Director*, dated September 8, 2003.

On appeal, counsel states that Citizenship and Immigration Services did not properly evaluate the significant evidence of record proving that the applicant is entitled to a waiver. *Form I-290B*, dated October 7, 2003.

The AAO notes that counsel requested 30 days after filing the appeal to submit a brief and/or evidence to the AAO. One year and five months have elapsed since the filing of the appeal and no additional documentation has been received into the record. The appeal will therefore be decided based on the record as it currently stands. The entire record was reviewed and considered in arriving at a decision on the appeal.

The AAO notes that the decision of the district director states that the district director is denying the applicant's Application for Waiver of Ground of Excludability (Form I-601) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). *Decision of the District Director*. However, as the focus of the discussion and the final determination of the OIC contained therein address the applicant's Application for Waiver of Ground of Excludability, the AAO likewise focuses on the Form I-601 application and arrives at a decision solely regarding appeal of the Form I-601 application.

The record reflects that, the applicant entered the United States without inspection, but was encountered by United States Border Patrol agents on October 7, 1994. The applicant provided these agents with a fraudulent name and date of birth.

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.

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 spouse. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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 contends that the applicant's spouse would suffer hardship as a result of relocation to India in order to remain with the applicant. Counsel submits a statement from the applicant indicating that India is a male dominated culture in which his wife would be expected to convert to the Hindu faith and become subservient to her husband and his extended family members. *Answer Regarding My I-106 [sic] Waiver*, dated November 21, 2002. The applicant states that he will be unable to demonstrate affection for his wife and children in India and he fears this will cause his family pain. *Id.* The applicant states that Islamic terrorists operating in India target Westerners and he fears for the well-being of his family if they reside in India. *Id.*

The record fails to establish extreme hardship to the applicant's spouse if she remains in the United States in order to maintain her safety and the safety of her children as well as residence in her adoptive country. Counsel contends that the applicant's spouse will endure emotional and psychological hardship in the absence of the applicant. Counsel submits a psychosocial family assessment prepared by a social worker to support this assertion. See *Psychosocial/Family Assessment by Nancy Kahn, CSW, ACSW*, dated November 17, 2002. The assessment provides a family history and concludes that the applicant's spouse "would be at risk of developing a reactive depression" if the applicant departed from the United States and predicts behavioral problems from the applicant's children in that situation. *Id.* The AAO notes that the record fails to evidence an ongoing relationship between the applicant's spouse and a mental health professional. The AAO is unable to make a determination of extreme psychological hardship based on speculative findings offered in an assessment based on a single meeting between a social worker and the applicant's family. *Id.* ("This assessment is based on an interview conducted on 11/16/02 at the home of [REDACTED])

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* 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. 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. The AAO recognizes that the applicant's spouse 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.