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U.S. Citizenship  
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**DEC 12 2006**

FILE:

Office: NEW DELHI, INDIA

Date:

IN RE:



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

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge (Acting OIC), New Delhi, India denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for presenting falsified bank statements to a consular officer. [REDACTED] seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to join his lawful permanent resident (LPR) wife, [REDACTED] (a), and their two LPR children in the United States.

The record reflects that [REDACTED] used documents to make it appear as if he had more money than he did, in order to qualify for a non-immigrant visa in 1992. As a result of this misrepresentation the Acting OIC found the applicant to be inadmissible to the United States. *Acting OIC's decision, dated, March 28, 2005.* The Acting OIC also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, counsel submits a brief and additional documentation. The record includes the following documents: a hardship statement from [REDACTED] dated June 28, 2004; a statement from Mr. [REDACTED] dated June 19, 2004; a statement from [REDACTED]'s father, dated, June 28, 2004; as statement from [REDACTED] brother, dated June 28, 2004; a list of [REDACTED]'s USC and LPR relatives along with proof of immigration status; copies of the permanent resident cards (Forms I-551) of [REDACTED] and the [REDACTED]'s two children, [REDACTED] age 13, and [REDACTED] age 11; copies of the U.S. passports and Forms I-551 of several of [REDACTED]'s relatives; school enrollment verification for [REDACTED] and [REDACTED] proof that [REDACTED] has applied for a nursing license; a letter from [REDACTED] and [REDACTED] report card. The AAO reviewed the record in its entirety before issuing its decision.

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

- (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 that:

- (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 is dependent first upon a showing that the bar imposes an extreme hardship to the USC or LPR spouse or parent of the applicant. Hardship the applicant himself experiences upon denial of admission is not considered in section 212(i) waiver proceedings. Direct hardship to the children is also not considered. The [REDACTED] two children are not qualifying relatives. Thus, hardship suffered by them will be considered only insofar as it results in hardship to [REDACTED].

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, *supra* at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative 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 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. See *Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The applicant asserts that his wife cannot return to India because she has been waiting to immigrate to the United States since 1996 and that if she returns to India to avoid separation from her husband, she will be separated again from her parents and her siblings. See [REDACTED] *hardship statement and U.S. passports and green cards of her family in the United States*. The applicant did not explain or document why [REDACTED] parents and siblings could not visit her if she returned to India. In addition, no objective evidence was submitted to supplement [REDACTED] claim that separation from her parents and siblings would result in extreme emotional or psychological hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel asserts that [REDACTED] children will suffer extreme hardship if the Form I-601 is denied. Counsel asserts that if [REDACTED] returns to India, she will disrupt the education of her two children. See *school enrollment verification*. Direct hardship to an applicant's children is not considered in waiver proceedings under section 212(i) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. When a qualifying relative is alone in the United States caring for children, it is reasonable to expect that the children's emotional state due to separation from the other parent will have an impact on the qualifying relative. Yet counsel has not established that the applicant's wife will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of inadmissibility. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that separation from her husband will result in extreme hardship to [REDACTED] because she will have to raise her children as a single mother. Single parenting, while challenging, is not sufficient to establish extreme hardship to [REDACTED]. Single parents make adjustments to their schedules to deal with their children's educational, social, and medical needs as a normal part of life. These logistical issues are a normal part of life when parents live separately. [REDACTED] chooses to stay in the United States, she has established that she has a large network of family that may be able to help her with the children. She has not provided documentation to supplement her claim that separation from her husband would result in extreme emotional and psychological hardship. *Matter of Soffici*.

Counsel failed to submit objective evidence to supplement the assertion that [REDACTED] would suffer extreme emotional or psychological hardship if her husband's application is denied and has not established that [REDACTED] will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of inadmissibility. *Matter of Obaigbena*. The Srivastava's face the same difficult decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation or relocation on Mrs. [REDACTED] while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

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 wife faces extreme hardship if the applicant is refused admission. 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). 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 hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure emotional hardship if she remains in the United States separated from the applicant, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). 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(h) 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.