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FILE: [Redacted]

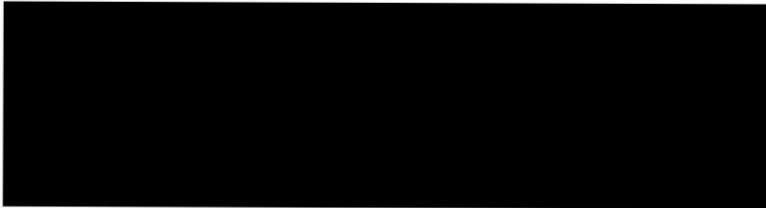
Office: SAN FRANCISCO, CA

Date: JAN 24 2007

IN RE: [Redacted]

APPLICATIONS: 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:



PRINTED NAME

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 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 seeking to procure admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen. The applicant 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.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *Decision of the District Director*, dated June 22, 2006.

On appeal, counsel asserts that district director abused his discretion in denying the application and failed to consider the hardship to the applicant's spouse. *Attachment to Form I-290B*, dated July 24, 2006.

The record includes, but is not limited to, a psychological evaluation, copies of prescriptions and a physician's letter. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant provided a false name and date of birth while seeking to procure admission on April 2, 1993. He was placed in exclusion proceedings and was subsequently ordered deported *in absentia* on December 22, 1994. However, the applicant remained in the United States. The record reflects that the applicant falsely stated that he was not involved in any organizations on his adjustment of status applications from September 21, 1995 and November 1, 2000.<sup>1</sup> As a result of his prior misrepresentations, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

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<sup>1</sup> The district director states that the applicant filed a fraudulent asylum application and that he committed marriage fraud. *Decision of the District Director*, at 4. The AAO notes that there are no affirmative findings of asylum or marriage fraud in the record. In addition, misrepresentations made on prior I-130 petitions, in which the applicant was the beneficiary, were made by the petitioners.

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.

*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. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to India or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to India. The applicant's spouse has two U.S. citizen children and her parents reside in the United States. The record is not clear as to whether her two siblings are currently in the United States. In regard to ties to India, the applicant's spouse was born and raised in India and is therefore familiar with the language and culture. There is no mention of country conditions and no evidence of financial hardship upon relocation to India. The applicant's spouse has medical problems, as further discussed below. However, the presence of the applicant would plausibly alleviate the alleged harmful effects of separation. The record does not reflect how relocation to India would result in medical problems for the applicant's spouse. The AAO notes that relocation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. Based on the record, the applicant has not shown that his spouse would suffer extreme hardship in the event that she relocates to India.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she remains in the United States. Counsel states that the applicant's spouse suffers from depression, anxiety and post-traumatic stress disorder, and separation may cause more debilitating psychiatric symptoms. *Counsel's Motion to Remand*, at 2, dated December 26, 2006. The record includes a psychological evaluation that details the applicant's spouse's difficult family history and her difficulty in dealing with the applicant's immigration issues. *Psychological Evaluation*, dated November 20, 2006. The psychological evaluation also details her attendance of therapy. *Id.* at 5. The psychologist states that the applicant's spouse has symptoms of depression, anxiety and post-traumatic stress disorder. *Id.* at 13. The record includes prescription records for the applicant's spouse for two types of anti-depressants. Therefore, it is plausible that separation will exacerbate her medical problems. The applicant's spouse is a housewife and she appears to be financially dependent on the applicant. *Form I-864, Affidavit of Support*, at 2-3, dated March 21, 2005. As such, she appears to be responsible for raising their two children. Based on the record, the AAO finds that extreme hardship to the applicant's spouse has been established in the event that she remains in the United States without the applicant.

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 notes that 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.