



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

H12

[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA, GA

Date:

JUN 22 2007

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, Georgia, 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 in September 1999. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to establish that her spouse would suffer extreme hardship if she were denied adjustment of status. The application was denied accordingly. *Decision of the District Director*, dated June 1, 2006.

On appeal, counsel asserts that the applicant's spouse and newborn child would suffer emotionally and financially as a result of being separated from the applicant. *Counsel's Brief*, dated June 20, 2006.

The record indicates that on December 19, 2005, the applicant made a sworn statement during her adjustment interview, stating that in September 1999 she entered the United States at Los Angeles airport under the name, [REDACTED]

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.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien herself experiences or her child experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in India or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

In counsel's brief, he states that the applicant's spouse would suffer emotionally and financially if the applicant is found to be inadmissible to the United States. He states that the applicant's spouse cannot relocate to India because his entire family lives in the United States and he cares for his elderly parents. Counsel states that the applicant and her spouse recently had a child and they also own a business in the United States. He states further that because of these familial and financial responsibilities the applicant's spouse cannot relocate to India. *Counsel's Brief*, dated June 20, 2006.

In addition, counsel states that if the applicant were to relocate to India without her spouse, the family business would suffer without her as manager. He states that if the applicant's spouse had to hire another manager the salary and costs associated with a new employee would severely impact the business' revenue. *Id.* Finally, counsel states that the decision to have their U.S. citizen child live without a mother or without a father may cause adjustment problems in the future. *Id.*

The AAO finds no documentation in the record to support counsel's claims regarding the responsibilities of the applicant's spouse in relation to his parents or the role the applicant plays in the operation of the family business. Although the AAO acknowledges counsel's claim regarding the negative effect that a family separation would have on the applicant's child, it, again, notes that an applicant's children are not qualifying relatives in 212(i) waiver proceedings. Moreover, the record fails to offer evidence as to the potential impact of a family separation on the applicant's child or how this impact would cause extreme hardship to the applicant's spouse. Thus, the applicant has not shown that her spouse would suffer extreme hardship as a result of her inadmissibility. Without documentary evidence to support the claims made, 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).

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.

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 she 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.