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

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FILE:



Office: BALTIMORE, MD

Date: MAR 28 2007

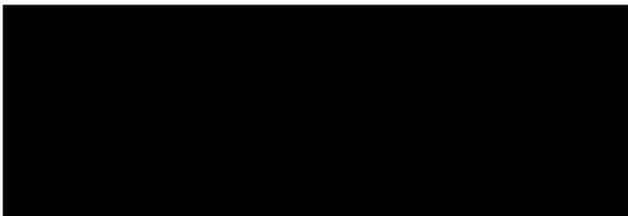
IN RE:



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:



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, Baltimore, Maryland 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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 U.S. citizen children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 19, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, psychological evaluations of the applicant and the applicant's spouse; a letter from a financial planner; letters of support from family and friends; country conditions information; a statement from the applicant; a statement from the applicant's spouse; tax statements for the applicant and his spouse; and an employment letter for the applicant and his spouse. The entire record was reviewed and considered in rendering this 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.

The record reflects that the applicant admitted in his adjustment of status interview to using a friend's passport when entering the United States at New York in June 1987. *Form I-485, Applicant's sworn*

statement dated May 5, 2005. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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, 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 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in India or 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 AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to India, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in New Delhi, India and lived there until she was 29 years old. *Form G-325A for the applicant's spouse*. Both of the parents of the applicant's spouse are deceased and her sister lives in the United States. *Form G-325A for the applicant's spouse; Letter from the sister of the applicant's spouse*, dated January 30, 2004. Although counsel asserts that the applicant's spouse's only other close relative, a maternal uncle, lives in the United States, the record does not address what additional family members, if any, the applicant's spouse has in India. *Attorney's brief*. Counsel asserts that the applicant and his spouse lack capital to start a business in India and their level of education and work experience leave them few employment opportunities in India. *Attorney's brief*. While the AAO acknowledges these assertions, it does not find that the record demonstrates that the applicant's spouse and the applicant would be unable to sustain themselves in India, particularly because they both grew up in New Delhi, India and are familiar with its culture and language. Counsel also asserts that the two U.S. citizen children of the applicant and his spouse would suffer if they moved to India, as they have become Americanized, speak little [REDACTED], and would have great difficulty functioning and pursuing an education in India. *Id.* He pointed to the country conditions information submitted by the applicant that indicates that only 59% of Indian children between the ages of five and 14 years attend school and that 500,000 children nationwide live in abject poverty. *Country Reports on Human Rights Practices – 2002, Department of State*. The AAO notes that the applicant's U.S. citizen children are not qualifying relatives in this case, nor are they

required to travel to India. Moreover, the record does not establish that the applicant's children would be unable to attend school or would live in poverty. Neither does it demonstrate how the challenges to be faced by the applicant's children in India would affect his wife, the qualifying relative. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in India.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse has a sister and maternal uncle in the United States. *Attorney's brief*. According to a certified financial planner, the applicant is the sole support for his family. *Letter from [REDACTED] Certified Financial Planner*, dated July 29, 2005. He owns a vending machine company that requires hard physical labor and very long hours. *Id.* There are no outside employees. *Id.* The applicant's spouse is not capable of managing the business, as she lacks the necessary business skills and physical ability. *Id.* If the applicant returned to India, he would have to hire a manager to run the business. *Id.* The business cannot afford to pay a manager and also provide an income to support his family. *Id.* If the applicant were to sell his business, the profit would be insufficient to pay off his business debts and support his family. *Id.* While the AAO acknowledges the statements from the certified financial planner, the record does not establish the basis for his evaluation, particularly his statements about the skills of the applicant's spouse and her inability to manage the family business. The applicant's certified financial planner does not indicate what documents he reviewed to reach his conclusions. There is nothing in the record to demonstrate that the applicant's spouse would be unable to obtain any work within the United States to help contribute to her family's financial situation. Furthermore, the record fails to show that the applicant would be unable to sustain himself and contribute to his family's financial well-being from India. The sister of the applicant's spouse has ovarian cancer and is bedridden most of the time. *Letter from the sister of the applicant's spouse*, dated January 30, 2004. The AAO notes the sister's statements regarding the inability of her sister (the applicant's spouse) to cope without the applicant, however, there is nothing in the record that establishes this. The applicant's spouse's daily life is experienced as sad and distressed with obsessive thoughts over the prospect of losing her husband and father of her children. *Psychological evaluation for the applicant's spouse [REDACTED]*, dated July 15, 2005. The state of affairs regarding the applicant has produced in the applicant's spouse a Generalized Anxiety Disorder characterized by excessive and negative apprehensive expectations. *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized anxiety disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. [REDACTED]—a licensed clinical social worker, also evaluated the applicant and his spouse. *Evaluation, [REDACTED] LCSW-C*, dated April 19, 2004. While [REDACTED] met with the applicant and his spouse twice and had several phone conversations, there is nothing to indicate on-going treatment and [REDACTED] makes no recommendations for such treatment. *Id.*

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 spouse will endure hardship as a result of separation from the applicant. However, the record has not demonstrated that her situation, if she remains in the United States, will be different from that of other individuals separated as a result of removal. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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(a)(6)(C) 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.