

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

#2

PUBLIC COPY

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 13 2007**

IN RE: [REDACTED]

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

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 Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of crimes involving moral turpitude (aggravated assault and making terroristic threats)¹. The record reflects that the applicant has a U.S. citizen spouse and stepchild (child). The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The 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 Director*, dated August 26, 2006.

On appeal, counsel asserts that the applicant's spouse and child would face extreme hardship if the applicant returned to India. *Brief in Support of Appeal*, at 3, dated February 15, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, the applicant's child's school records, the applicant's criminal disposition and the applicant's child's medical records. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was charged with the offenses of aggravated assault and terroristic threats in the Superior Court of DeKalb County, Georgia. *Criminal Disposition from the Superior Court of DeKalb County, Georgia*, dated March 6, 2003. The record reflects that the applicant pled guilty to terroristic threats and a nolle prosequi order was granted on the aggravated assault offense. *Id.* Therefore, the applicant's only conviction was for terroristic threats.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance... is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

¹ The AAO notes that the specific offenses were mentioned in the Notice of Decision for the applicant's I-485 application, not in the Notice of Decision for the applicant's I-601 application.

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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 one of the qualifying relatives must be established in the event that they relocate to India or in the event that they remain in the United States as they are 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 a qualifying relative in the event of relocation to India. Counsel states that the medical condition of the applicant's child prevents her from relocating to India, the applicant is from a small village, the closest medical facility is 60 miles away

and the applicant's daughter suffers frequent asthma attacks which require immediate attention. *Brief in Support of Appeal*, at 6-7. The record includes medical records for the applicant's child which reflect that she has asthma and has periodically required medical intervention to deal with her symptoms. The applicant's spouse states that it would be hard for the applicant to find a good job that allows him to support the family and provide for the child's medical needs. *Applicant's Spouse's Statement*, at 1, dated February 8, 2007. The AAO notes that there is no evidence that the applicant could not find employment in India and that the record does not support counsel's claim that his family could not live near a medical facility. Counsel states that the applicant was born in Jasrana, his family still lives there and this small village is 60 miles away from the closest medical facility. *Brief in Support of Appeal*, at 6-7. However, the AAO notes that the applicant's Form G-325A, Biographic Information, reflects that his mother and father reside in New Delhi. *Applicant's Form G-325, Biographic Information*, dated April 26, 2001. As a result, the record not only does not establish distance from medical care, but it undermines counsel's claims in this area. In addition, the record does not include evidence of any other relevant hardship factors. As such, the record does not evidence extreme hardship to either of the qualifying relatives if they relocate to India.

The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of remaining in the United States. Counsel states that the applicant provides emotional support for his spouse and child, the applicant runs the family business, either the applicant or his spouse is always at home with their child as they cannot afford child care, the applicant's spouse is entirely dependent on the income of the applicant, and the applicant's spouse would not be able to support herself and her child without government assistance. *Brief in Support of Appeal*, at 3-4. Counsel states that the applicant's child has asthma, she does not have medical insurance and the applicant pays for her medical bills. *Id.* at 1-2. The applicant's spouse states that without the applicant, she would have to close their store which is their only source of income. *Applicant's Spouse's Statement*, at 1. The applicant states that she does not have a college education and the chances of her finding a job that would provide for her and her child are nearly non-existent. *Id.* The record reflects that the applicant's child is not covered by insurance, but is a "self-pay" patient who has most recently been covered under Medicaid. *Applicant's Medical Records*, various dates. As such, the record reflects that the applicant's departure would end the family's ability to pay for the child's health care. The record establishes extreme hardship to the applicant's child, but not his spouse, if they remain in the United States without the applicant.

U.S. court decisions have 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. Moreover, the U.S. Supreme Court additionally 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.

Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of 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 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.