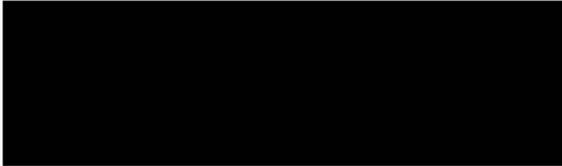


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FILE:



Office: NEW DELHI, INDIA

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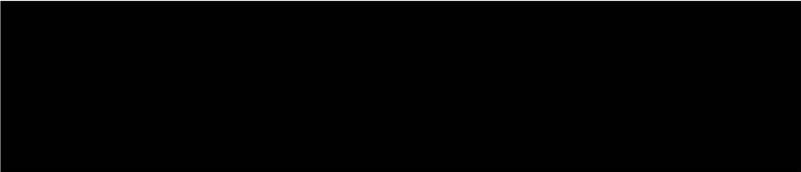
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IN RE:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India 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 her spouse and children.

The Officer in Charge 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated February 28, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) has erred as a matter of law in finding that the applicant has failed to meet the burden of establishing extreme hardship to her qualifying relative as necessary for a waiver under 212(i) of the Act. *Attorney's brief*. Counsel also notes that the applicant's spouse does not have a copy of the statements relied upon by USCIS to make an inadmissibility finding for the applicant under section 212(a)(6)(C)(i).¹ *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a psychological evaluation of the applicant's spouse; a medical letter for the applicant; statements from the applicant; and a statement from the applicant's 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.

¹ The AAO notes that the applicant may file a Freedom of Information Act (FOIA) request to obtain a copy of the public information in her file. The applicant may then share this information with her spouse if she chooses to do so.

The record reflects that the applicant used a photo-substituted passport with a visa to gain admission to the United States in 1989. *Consular Memorandum*, dated December 2, 2005; *Statement from the applicant*, dated September 23, 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 herself 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's waiver request is denied. Hardship to the applicant's children will be considered only to the extent that it affects the applicant's spouse, the qualifying relative in this case. 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 he resides in India or 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.

If the applicant's spouse joins the applicant in India, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in India. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. While the record does not address the exact date the applicant's spouse left India, the applicant's spouse states that he has lived in the United States for approximately 20 years. *Statement from the applicant's spouse*, dated December 13, 2005; *Attorney's brief*. Except for his father, all of the family members of the applicant's spouse, including his brother and his brother's family members, live in the United States. *Id.* The applicant's spouse is self-employed in the business of gas stations and convenience stores. *Id.*; *G-325A, Biographic Information sheet, for the applicant's spouse*. His business assets in the United States are worth approximately five million dollars. *Statement from the applicant's spouse*, dated December 13, 2005. The AAO notes that the record fails to include tax statements as well as proof of ownership of the applicant's spouse's businesses. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). The family of the applicant's spouse is dependent upon his income. *Statement from the applicant's spouse*, dated

December 13, 2005. The applicant's spouse asserts that he cannot do anything in India and he is in a business which cannot be shifted elsewhere. *Id.* Counsel also contends that the applicant's spouse has to remain in the United States to fund the college education of his four children. *Attorney's brief.* While the AAO acknowledges these assertions, it notes that the applicant's spouse completed the equivalent of high school in India, (*See Psychological Evaluation from [REDACTED], Ed.D., dated June 30, 2006*) and there is nothing in the record that demonstrates that the applicant and her spouse would be unable to contribute to their family's financial well-being from a place other than the United States. The applicant's spouse states that he has allergies and that he cannot stay in India because of the unavailability of suitable medical care. *Statement from the applicant's spouse, dated December 13, 2005.* The AAO notes that there is no documentation in the record from a licensed health practitioner confirming the medical condition of the applicant's spouse, nor does the record demonstrate by published reports that adequate medical care would be unavailable to the applicant's spouse in India. As previously noted, going on record without supporting documentary evidence will not meet the burden of proof in this proceeding. *See 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)).* When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in India.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously mentioned, naturally all of the family members of the applicant's spouse live in the United States. *Statement from the applicant's spouse, dated December 13, 2005.* A psychological evaluation finds that the applicant's spouse is suffering from Major Depressive Disorder, Mild, single episode. *Psychological Evaluation from [REDACTED], Ed.D., dated June 30, 2006.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on three interviews several days apart with the applicant's spouse, two of his children, and the older brother of the applicant's spouse. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or children or any history of continuing treatment for the Major Depressive Disorder identified in the evaluation. Moreover, the conclusions reached in the submitted evaluation, being based on such limited contact with the applicant's spouse, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant's spouse states that his family life is zero without his wife. *Statement from the applicant's spouse, dated December 13, 2005.*

The record indicates that the applicant has also been identified as suffering from depression. *Letter from Dr. [REDACTED] Neuro-Psychiatry Centre, India, dated December 2, 2008.* The applicant's children miss their mother and their separation from her has affected their health. *Psychological Evaluation from [REDACTED] Ed.D., dated June 30, 2006.* As previously noted, neither the applicant nor her children are qualifying relatives in this particular case. Additionally, the record fails to document how any hardship the children may endure affects the applicant's spouse, the only qualifying relative.

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. Separation from a loved one is a normal result of the removal process. In this particular case, the applicant has not shown that her spouse's emotional hardship is beyond that endured by others in similar situations. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he 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.