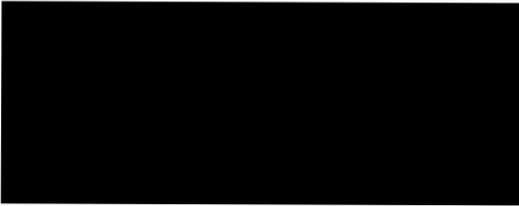


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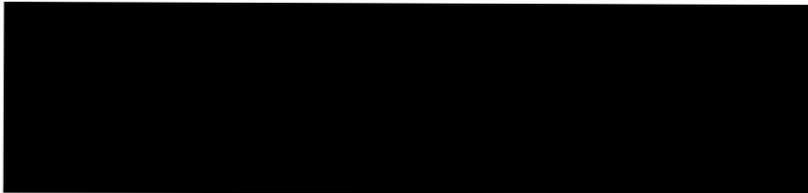
Date: **APR 10 2008**

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 March 27, 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. *Form I-290B*. Specifically, counsel notes that the Service failed to consider the cumulative effect of the circumstances and that the applicant was not provided with an adequate opportunity to present his case. *Id.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a psychological evaluation of the applicant; a medical letter for the applicant's spouse; tax statements for the applicant's spouse; a letter from the applicant's spouse to his Congressman; medical documentation related to one of the applicant's children; and a statement from the applicant. 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 used an Indian passport bearing the name of another individual to gain admission to the United States in 1989. *Consular Memorandum*, dated May 17, 2005; *Form G-166, Report of*

Investigation; Statements from the Ministry of External Affairs, New Delhi, India. 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 child 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.

On appeal, counsel contends that the restrictions imposed by the Immigration Reform and Immigrant Responsibility Act (IIRIRA), which have limited the relief available to individuals subject to the grounds of section 212(a)(6)(C)(i) of the Act, postdate the applicant's misrepresentation and may not be applied retroactively, unless so designated by the Congress.

The AAO notes that *Landgraf v USI Film Prods.*, 114 S. Ct. 1483 (1994) held that a statute has a retroactive effect when:

[I]t would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result. *Landgraf* at 280.

Citing to *Matter of Soriano*, 21 I&N 516 (BIA, AG 1996) and *Landgraf*, the majority and therefore precedential opinion in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), stated that a statute is not retroactive if:

[I]t does not impair rights a party possessed when he or she acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. More specifically, an intervening statute that either alters jurisdiction or affects prospective injunctive relief generally does not raise retroactivity concerns, and, thus, presumptively is to be applied in pending cases. [citation omitted]. Likewise, the Attorney General concluded [in *Soriano*] that the new provisions in section 212(c) applied to pending cases because the new legislation acted to withdraw her authority to grant prospective relief; it did not speak to the rights of the affected party. [citation omitted]. The effect was therefore to alter both jurisdiction and the availability of prospective relief to the alien. [citation omitted]. *Cervantes-Gonzalez* at 564.

The Board of Immigration Appeals held in *Cervantes-Gonzalez* that a request for an INA § 212(i) waiver of the Act is a request for prospective relief and as such its restrictions may be applied to conduct which predates passage of the current statute. Accordingly, the AAO concludes that the applicant in the present case must establish that her spouse will suffer extreme hardship if her waiver request is denied.

Counsel also asserts that the applicant was not provided with an opportunity to make an oral or written statement regarding her case prior to the denial of the Form I-601. *Attorney's brief*. The applicant has been provided with an opportunity to provide a statement and additional evidence on appeal. The AAO notes that counsel has submitted additional evidence and finds that the appeal process has, therefore, responded to counsel's concerns.

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 AAO notes that the applicant's spouse left the United States in November 1999 and resided in India until September 2000. *Id.* The mother of the applicant's spouse continues to live in India. *Id.* The record does not address what additional family members the applicant's spouse may have in India.

Counsel also asserts that hardship to qualifying children is a factor to be evaluated in the extreme hardship analysis, and that children's education and language abilities in a foreign country should be considered. *Attorney's brief*. The record also indicates that the applicant's child has asthma and suffers from depression. *Medical Certificate, [redacted], Delhi, India, dated April 17, 2006; Out Patient Card, Institute of Human Behaviour and Allied Sciences, Delhi, India, dated July 8, 1994*. The AAO acknowledges that one of the applicant's children was diagnosed with separation anxiety in 1994. *Outpatient Card notes, Institute of Human Behaviour and Allied Sciences, Delhi, India, dated July 8, 1994*. As previously stated, the applicant's children are not qualifying relatives for purposes of this case and any hardship they may endure will be considered only to the extent that it impacts the applicant's spouse, the only qualifying relative. The AAO observes that the record fails to document how any suffering the applicant's children would experience if they resided in India affects the applicant's spouse.

Counsel notes that there are no suitable jobs for the applicant's spouse in India. *Attorney's brief*. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). The applicant's spouse is suffering from hypertension with normal target organs. *Statement from [REDACTED] M.D., [REDACTED]s Clinic & Eye Center, Delhi, India*, dated May 11, 2006. Dr. [REDACTED] advised the applicant's spouse to continue with prescribed medicines and to present himself for regular periodic check-ups so as to ascertain his health status and progress of his illness. *Id.* The AAO finds the record to indicate that the applicant's spouse is able to receive adequate health care in India, as documented by his treating physician. 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. Apart from his children, the record does not address what family members the applicant's spouse may have in the United States. A psychological report for the applicant states that she has a reported history of Psychosis (Schizophrenia) since 1990 and has been on continuous medication since that time, but does not regularly take her medicine. *Statement from [REDACTED] Consultant Psychologist, Jain Hospital, Department of Psychiatry & Psychology, Delhi, India*, undated. The AAO observes that at no point in the record does counsel or the applicant's family members address the applicant's psychiatric psychosis (schizophrenia) and how her mental illness affects her spouse, particularly if he were to reside in the United States. While the AAO acknowledges the seriousness of psychosis (schizophrenia) and finds it to constitute a significant health condition, it notes the record fails to include documentation, such as statements from the applicant's spouse and the children, as to how this significant medical condition affects the lives of her family. The record also fails to include documentation regarding the type of treatment available to the applicant in India and whether the cost of this treatment places an added financial burden upon the applicant's spouse. Counsel notes that the applicant's spouse has suffered a financial burden by having to regularly travel to India to see the applicant. *Attorney's brief*. Counsel states that whatever money the applicant's spouse has earned in the United States has been spent on travel to India. *Id.* The AAO notes that while the record includes tax statements from 2003 and 2004 showing the earnings of the applicant's spouse to India, the record fails to include any documentation of the travel of the applicant's spouse, such as airline tickets and receipts, and the cost of such travel. 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)).

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 part of the removal process. In this particular case, the applicant has not shown that her 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 his continued 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.