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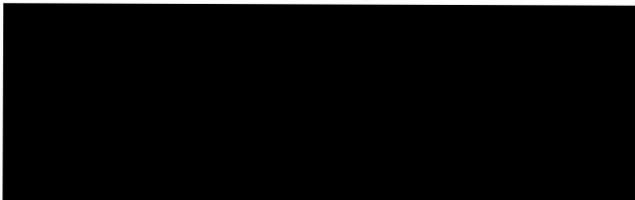
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FILE: [REDACTED] Office: NEW DELHI, INDIA Date: FEB 04 2008

IN RE: Applicant: [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:



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 Officer in Charge, New Delhi, India, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). 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 37-year-old native and citizen of Nepal who was found inadmissible to the United States. The record reflects that the applicant is the spouse of a U.S. citizen, and the beneficiary of an approved relative petition filed on his behalf by his spouse. The applicant was removed from the United States in 2004.¹ He seeks a waiver of inadmissibility in order to return to the United States.

The officer in charge determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i) of the Act, 8 U.S.C. §§ 1182(a)(6)(C)(i) and (a)(9)(B)(i). The officer in charge further found that the applicant failed to establish extreme hardship to his U.S. citizen spouse, and denied his waiver application accordingly. In so doing, the officer in charge also found that the application should be denied in the exercise of discretion.

On appeal, the applicant contends that his spouse would face extreme hardship if he were not permitted to return to the United States. *See* Applicant's Appeal Brief, and exhibits cited therein. The applicant further claims that he should be granted the waiver in the exercise of discretion. *Id.*

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The officer in charge found the applicant to be inadmissible based on the fact that he had, on more than one occasion, submitted fraudulent information in order to obtain asylum or other immigration benefits. The applicant admits that he presented fraudulent information, but insists that he was ignorant of the law and was following the advice of others. *See* Appeal Brief, and exhibits cited therein. The officer in charge further found that the applicant was inadmissible under section 212(a)(9)(B)(i), 8 U.S.C. § 1182(a)(9)(B)(i)², for having been unlawfully present in the United States and for having been removed. The applicant does not dispute this finding. The AAO concludes that the officer in charge was correct in finding

¹ The applicant has concurrently filed an appeal of the denial of his Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

² Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

that the applicant is inadmissible. The officer in charge's determination of inadmissibility is therefore affirmed. The question remains whether the applicant qualifies for a waiver.

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

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

Section 212(a)(9)(B) of the Act, in turn, provides:

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(i) or 212(a)(9)(B)(v) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. Hardship to an applicant's child is also not a relevant consideration.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their

totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The applicant's spouse, [REDACTED], is a 37-year-old native of Nepal who became a U.S. citizen upon her naturalization in 2001. She has resided in the United States since 1995. She met the applicant in Nepal, but they were married here after her arrival. She has a 19-year-old daughter from a previous relationship. She has several siblings, including a sister who resides in the United States with her family. She owns a grocery store business, which she operated with the applicant before his departure and now handles on her own. Since the applicant's departure, she has sold one of the two grocery stores the couple used to own and operate. The applicant's spouse owns a home in El Cerrito, California. The applicant's spouse suffers from depression due to the separation from her husband, as evidenced by a psychology report in the record.

The record contains evidence relating to unemployment in Nepal. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to relocate to Nepal and doing so would be a matter of family choice. The record, in any event, suggests that the applicant's spouse has decided to remain in the United States and not relocate to Nepal. Thus, hardship that the applicant's spouse may experience should she relocate to Nepal is not a relevant consideration. The AAO nonetheless notes that a lower standard of living and decreased employment opportunities do not amount to "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

The record also contains articles relating to the impact of a father's absence on children. The AAO notes that hardship to the applicant's spouse's child is not a relevant consideration, as it is not statutorily permissible. Such hardship is only relevant to the extent that it impacts the applicant's spouse. The AAO notes that the applicant's spouse regrets not being able to spend sufficient time with her daughter, and regrets the fact that she does not have her husband's help and support. The AAO finds that this hardship too is not unusual in cases such as the applicant's, and therefore does not rise to the level of "extreme."

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is denied the waiver. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO finds that the applicant has not established that his inadmissibility would cause extreme hardship to his spouse. In this regard, the AAO notes that the applicant's spouse has family in the United States including her 19-year-old daughter. The AAO further notes that the applicant's spouse has a good business, which is the source of sufficient income to support herself, her daughter, her husband and other relatives in Nepal. The AAO also notes that the applicant's spouse owns her own home. Although the AAO recognizes that the applicant's spouse is required to work harder in her husband's absence, and that her work schedule and increased responsibilities have caused her to suffer from depression and related illnesses, the AAO does not find that these circumstances rise to the level of "extreme" as they are usually experienced by individuals in similar situations.

While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse due to the potential separation from the applicant rises to the level of extreme.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i). Having found the applicant statutorily ineligible for a waiver, the AAO need not address whether the granting of the waiver is warranted in the exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. 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.