



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: MIAMI (TAMPA) FLORIDA

Date: FEB 27 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:

[REDACTED]

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 Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, [REDACTED], is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the Acting District Director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Acting District Director, dated March 14, 2006.*

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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.

The Record of Sworn Statement, which the applicant refused to sign and is dated May 21, 1989, reflects that the applicant stated to an immigration inspector that he was issued a nonimmigrant visa, number 106232, after making a personal appearance at the U.S. embassy in Bangkok, Thailand, on May 4, 1989. The Record of Sworn Statement also reflects that after the immigration inspector indicated to the applicant that his U.S. nonimmigrant visa was counterfeit, the applicant admitted to obtaining the visa from a Thai national, Athit, who was outside the embassy, after providing to Athit his passport and two photographs. Thus, the record establishes that the U.S. nonimmigrant visa that the applicant presented to an immigration inspection at the Seattle-Tacoma Airport, so as to gain admission into the United States, was counterfeit. The record therefore supports the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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.

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. Hardship to the applicant and his child and stepchildren are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying

relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his child and stepchildren will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. Once 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains income tax records; letters; bankruptcy documents; birth certificates; marriage certificates; employment letters; certificates of citizenship; a naturalization certificate; a radiological exam dated July 17, 2003; an initial narrative report dated July 7, 2003; disability requests; information about India, including the article "Black is blemish in India"; and other documents.

The letters in the record from the applicant's stepchildren convey that they need their stepfather, who has provided for the family and helped their mother following her injury in a car accident. A letter by [REDACTED], the applicant's stepson, states that [REDACTED] went to college while working full-time to help with the bills, but it was not enough. A letter by [REDACTED], the applicant's stepdaughter, states that when the family was on the verge of losing its house her mother filed bankruptcy and her grandmother bought the house. [REDACTED] states that a dealer repossessed their van because her father was not home and her mother could not afford to pay the bills.

The letters written by neighbors, relatives, friends, and [REDACTED], the 6th Grade Office Clerk with Meadowlawn Middle School, attest to the good character of the applicant.

The January 5, 2005 letter by [REDACTED], the applicant's wife, states that the applicant assisted her in obtaining a nursing assistant certification by working and picking the children up from school, by cooking their dinner, and by helping the children with homework. She states that she would not be able to support her five children on her salary of \$11.22 per hour as a certified nurse assistant. She states that she works nights so as not to pay childcare, that the applicant takes care of the children in the evening, and that she would not be able to afford childcare if the applicant were deported. She states that when the applicant was in Immigration and Naturalization Service's custody she fell behind in paying bills and filed bankruptcy to stop the house's foreclosure. [REDACTED] states that on July 3, 2003 she was in a car accident and was out of work for six months from neck and back injuries. She states that she received physical therapy for six months and has a herniated and bulging disc that requires surgery, and has no health insurance until she pays the balance owing on her insurance payments. She states that the pain caused by the car accident makes it hard for her to work. [REDACTED] states that she would not leave the United States to live in India with her children, who do not want to go there. She states that they do not speak the language spoken in India and it would be difficult culturally because of her skin color. She states that the applicant would not earn enough money to support the family.

The disability requests by [REDACTED], a chiropractic physician, with Hess Spinal Centers, reflect that [REDACTED] was placed on disability the following dates: March 11, 2004 to March 22, 2004; September 16, 2003 to November 1, 2003; August 21, 2003 to September 21, 2003; July 29, 2003 to August 21, 2003; July 21, 2003 to August 4, 2003; July 14, 2003 to July 21, 2003; and July 7, 2003 to July 14, 2003. The disability requests indicate that [REDACTED] has a cervical and lumbar disc and severe myofascial pain syndrome.

The comprehensive spine consultation dated September 11, 2003, by [REDACTED], M.D., with Coastal Spine Specialists, reflects that he discussed with Ms. Singh cervical spine surgery for anterior decompressive discectomy at C5/6 with interbody fusion and anterior stabilization with titanium plate and screws as a option if she does not improve with time and with more conservative treatment.

The June 19, 2006 letter by [REDACTED] with The Abbey Rehabilitation and Nursing Center, LLC, confirms that [REDACTED] is an employee of the company and that on average she misses three to four days of work each month due to her medical condition. The June 12, 2006 letter by [REDACTED], payroll, with The Abbey Rehabilitation and Nursing Center, LLC, conveys that [REDACTED] was off work from July 3, 2003 to December 8, 2003 and from October 8, 2005 to November 22, 2005 due to approved leave of absences related to medical conditions.

The June 27, 2006 letter by [REDACTED], M.D., with Abinales & Abinales, M.D.P.A., states that Ms. [REDACTED] is being seen for herniation of discs and that her office provides pain medication to [REDACTED]. Ms. [REDACTED] states that [REDACTED], who will need ongoing treatment for her problems, should see a neurologist.

The Motion to Voluntarily Dismiss Chapter 13 Case states that the "case was instituted by the filing of a Voluntary Petition under Chapter 13 of the Bankruptcy Code on October 20, 2003," and because the debtor desires to voluntarily dismiss the Chapter 13 Case, the court entered an order dismissing the Chapter 13 Case.

The Proof of Claim reflects that [REDACTED]'s total mortgage arrearage is \$9,767.56. The Notice of Post-Petition Payment Change shows that the Debtor's regular monthly payment amount is \$853.49.

earnings statement for the period ending January 7, 2005 reflects net pay of \$826.49.

The January 10, 2005 letter by [REDACTED] reflects that the applicant has been employed full time, earning \$7.50 per hour, with Pinellas Park Subs and Gryos since the beginning of 2004.

The World Factbook's information on India reveals that 25 percent of the population in India, which was estimated to be 1,065,070,607 in July 2004, lived below the poverty line. Of the 472 million estimated to be in the labor force, 60 percent were in agriculture, 17 percent in industry, and 23 percent in services.

On appeal, counsel states that Citizenship and Immigration Service (CIS) abused its discretion in denying the waiver of inadmissibility. He states that [REDACTED]'s medical problems require constant treatment and make it difficult for her to work on a regular basis. Counsel states that while [REDACTED]'s husband was detained in CIS custody she filed bankruptcy because she could not pay her mortgage. Counsel states that all of Ms. [REDACTED]'s close family are in the United States and that she has no family or ties to India.

In rendering this decision, the AAO has carefully considered and given proper weight to the evidence in the record.

The record establishes that [REDACTED] would experience extreme hardship if she remained in the United States without the applicant.

The record shows that [REDACTED] who is employed as a certified nursing assistant, has sustained injuries as a result of a car accident, which has resulted in her taking extensive leave of absences and missing three to four days of work each month. The letter from [REDACTED] conveys that [REDACTED] is being seen for herniation of discs, that she will need ongoing treatment, and that she requires pain medication. [REDACTED]'s net pay is \$826.49 and her regular monthly payment amount is \$853.49. In 2003, she filed for bankruptcy, which she states occurred because her husband was not able to financially support the family while in custody. The record shows that [REDACTED] children are 23, 21, 19, 17, and 7 years old. Although [REDACTED] has adult children who may be able to provide some financial assistance, the AAO finds that the record conveys that [REDACTED] requires her husband's financial support in order to meet the mortgage and household expenses.

The present record is sufficient to establish that [REDACTED] would endure extreme hardship if she joined the applicant in India.

The June 27, 2006 letter by [REDACTED] conveys that [REDACTED] takes pain medication, will need ongoing treatment for herniation of discs, and should see a neurologist. [REDACTED]'s earnings statement reflects that she receives health insurance through her employer, and her letter in the record indicates that her insurance carrier paid for six months of physical therapy after the car accident. In light of the fact that 25 percent of the population in India lived below the poverty line in 2004, with the majority of the population employed in agriculture, the AAO finds that [REDACTED]'s ongoing health problems would impact her employability in India. No evidence suggests that [REDACTED] would be able to afford the treatment and medication that she now receives for herniation of discs.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship in the event that [REDACTED] remained in the United States without her husband; and in the alternative, in the event that she joined the applicant to live in India. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's spouse and his U.S. citizen child and stepchildren, letters commending the applicant's character, his history of employment and payment of income taxes, and the passage of approximately 18 years since the applicant's immigration violation. The unfavorable factors in this matter are the applicant's misrepresentation and periods of unauthorized presence, his plea of guilty to the offense of sale of alcoholic beverage to a minor in January of 2004, and his plea of *nolo contendere* to the offense of battery in January of 2003. The AAO notes that the applicant does not appear to have any criminal convictions after January 2004.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's flagrant breach of the immigration laws of the United States, the severity of the applicant's misrepresentation is at least partially diminished by the fact that 18 years have elapsed since the applicant's immigration violation. The AAO finds that the hardship imposed on the applicant's spouse and family as a result of his inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.