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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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HL

FILE:



Office: NEW DELHI, INDIA

Date:

NOV 04 2008

IN RE: Applicant:



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:

SELF-REPRESENTED

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 Officer-In-Charge (OIC), New Delhi, India, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant appears to be represented; however, the individual listed, as a representative on appeal is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. The decision will be furnished only to the applicant.

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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for submitting counterfeit police clearance certificates when applying for an immigrant visa. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 his United States citizen spouse and children.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Officer-In-Charge's Decision*, dated June 15, 2006.

On appeal, the applicant states that he has "not committed any fraud or submitted any counterfeit certificates." See *attachment to Form I-290B*, filed June 23, 2006.

The record includes, but is not limited to, the applicant's statement, the counterfeit police clearance certificates, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien....

The record indicates that on May 3, 2004, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. The applicant's Form I-130 was approved on the same day. On August 10, 2004, the applicant applied for an IR-1 immigrant visa and in support of his application, he submitted counterfeit police clearance certificates. On May 12, 2005, the applicant filed a Form I-601. On June 15, 2006, the OIC denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant contends that "[t]here has been a serious misunderstanding in regard to the Police Clearance Certificate and the Passport Clearance Certificate.... Fortunately for [him] the issue of submitting counterfeit certificate is not true...[he] got the certificate in good faith and submitted them to Chennai consulate. It was not [his] fault." *Attachment to Form I-290B, supra*. Once the applicant discovered the certificates were counterfeit, he "submitted a genuine certificate." *Id.* The AAO notes that despite the fact that the applicant later submitted cleared police certificates, he initially submitted police clearance certificates that were determined to be counterfeit. The AAO finds that even though the applicant claims he did not know the initial police clearance certificates were counterfeit, he submitted these counterfeit documents in an attempt to obtain an immigrant visa, and it is not the responsibility of USCIS to determine if the applicant has reviewed the documents he is submitting on his own behalf.

The AAO finds that the applicant willfully misrepresented material facts in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen wife. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant states his “wife had to leave to the US leaving behind two children for support of [his] family. She came back since [their] younger child has chronic asthma, and was severely suffering from [her] absence.” *Attachment to Form I-290B, supra*. The AAO notes that the applicant submitted documents establishing that his son has bronchial asthma; however, there was no documentation submitted establishing that the applicant’s son could not continue to receive treatment for his asthma in India. Additionally, the AAO notes that the applicant’s children were born in India, and there is no evidence that his children are having difficulties rising to the level of extreme hardship in adjusting to the culture of India. Furthermore, the AAO notes that the applicant’s wife is a native of India, who has spent her formative years in India, she speaks the native language, and both the applicant and his wife have family ties in India. The applicant states his wife is suffering from depression. *See letter from applicant*, dated June 6, 2006. The AAO notes that there are no professional psychological evaluations for the AAO to review to determine if the applicant’s wife is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she stays in India with the applicant.

In addition, the applicant does not establish extreme hardship to his wife if she goes to the United States without the applicant. As a United States citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to his family’s financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant’s United States citizen wife will endure hardship as a result of separation from the applicant. However, her situation if she chooses to go to the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s wife caused by the applicant’s inadmissibility to 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)(i) 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.