



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File:  Office: SAN FRANCISCO, CA

Date:

FEB 28 2003

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)

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be granted and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of India who was found by the district director 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and reside with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On appeal, counsel asserted that the district director erred in basing his decision on an incorrect review and analysis of the record and abused his discretion in finding that the permanent forced separation of a husband and wife fails to meet the standards of extreme hardship. Counsel argued that the factors presented, when coupled with the additional information provided on appeal, establish that the decision is contrary to prevalent precedent decisions of the United States Ninth Circuit Court of Appeals and Board of Immigration Appeals (BIA).

On motion, counsel submits a brief reiterating the same arguments and assertions that were made on appeal.

The record reflects that the applicant procured admission into the United States on July 27, 1989 by presenting a photo-substituted passport containing a U.S. nonimmigrant visa in another persons's name.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(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.

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the BIA stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 finally, 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 record reflects that the applicant and his spouse, also a native of India, were married in August 1997. The spouse has three

minor children from a prior marriage. The record contains a declaration from the applicant's spouse dated October 23, 1998 asserting that she would suffer financial and emotional hardships if the applicant were removed whether she remains in the United States separated from him or relocates to India with him. She states that if she relocated to India with the applicant, she would not be able to adjust to life in that country and would be separated from her children in the United States. She further claims that due to an undiagnosed medical condition, her relocation to India would create a significant health risk since medical care in that country is very poor compared to the treatment she currently receives in the United States.

On appeal, counsel submitted additional documentation including a brief; information on country conditions in India; evidence of the spouse's financial commitments; and a copy of the spouse's child-custody agreement. Counsel stated that the applicant's spouse would be compelled to relocate to India to remain with the applicant and would be forced to take her three minor children with her because she has legal and physical custody of them. The children would suffer from culture-shock in India and would not be able to keep in touch with their biological father. The spouse would face a severe disruption and decline of her financial and economic standard of living and would be at serious personal risk due to the political, economic, medical and social conditions in that country. Counsel also stated that if the spouse remains in the United States separated from the applicant, her children would lose a loving step-father and the spouse's unstable financial situation and resulting inability to support and provide for her daughters would cause her emotional hardship and anxiety.

On motion, counsel refers to the documentation submitted on appeal and makes the same arguments and assertions that were made on appeal. The information previously submitted was reviewed and considered by the Associate Commissioner in his dismissal of the applicant's appeal. No new information, evidence, or additional documentation has been submitted by counsel on motion.

In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

There are no laws that require the applicant's spouse to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). 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. See *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994). In *Silverman*

v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his spouse (the only qualifying relative in this matter) would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Hardship to the applicant himself, or his spouse's children, is not a consideration in section 212(i) proceedings. 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(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed. The application will be denied.

ORDER: The Associate Commissioner's order dated September 17, 2002 dismissing the appeal is affirmed. The application is denied.