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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

H3

MAR 11 2004



FILE:



Office: NEW DELHI, INDIA

Date:

IN RE:

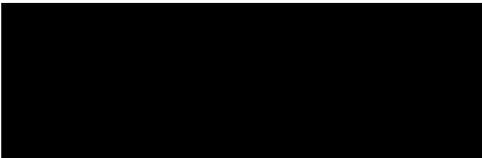
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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, Director
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 record reflects that the applicant is a native and citizen of India. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her lawful permanent resident spouse. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to travel to the United States and reside with her spouse and children.

The Officer in Charge concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Officer in Charge Decision* dated June 4, 2003.

The record reflects that the applicant was admitted to the United States in November 1986 as a nonimmigrant visitor. The applicant remained in the United States beyond her authorized stay and finally departed in July 1999. It was this departure to India that triggered her unlawful presence.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until July 1999, the date of her departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(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.

. . . .

(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.

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act regarding fraud, misrepresentation and unlawful presence in the United States and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground of inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

As stated above, section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 the present case, the applicant must demonstrate extreme hardship to her lawful permanent resident spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) of the Act. These 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.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) failed to correctly assess extreme hardship to the applicant's spouse (Mr. [REDACTED] and her children. In support of this assertion, counsel submitted a brief, affidavits from the applicant and her spouse and letters from doctors regarding Mr. [REDACTED] and his children's health. A letter from a physician dated September 10, 2002 states that Mr. [REDACTED] suffers from major depression single non-psychotic, anxiety and insomnia. The letter indicates that Mr. [REDACTED] was prescribed antidepressant medication and psychotherapy. The appeal, submitted in July 2003, contains no follow-up to show whether Mr. [REDACTED] followed the doctor's recommendations or, if so, how his treatment was progressing. Further, the letter does not mention if Mr. [REDACTED] condition can be treated in India if he decides to relocate.

In the affidavit presented by the applicant she states that the lack of adequate educational opportunities and insufficient medical facilities for her children would impose hardship to Mr. [REDACTED] and her children. In the present case the record reflects that Mr. [REDACTED] is a native of India and that he met and married his wife in India. No reason was provided, other than general country conditions and the opportunity for educational opportunities in the United States for her children as to why he would not be able to return to India and obtain gainful employment if he decides to relocate to India.

As mentioned, section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act, is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien.

Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. The assertions regarding the hardship of applicant's children would suffer will thus not be considered.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). 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). *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. Moreover, the U.S. Supreme 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.

Additionally, on appeal counsel refers to caselaw that addresses cases involving suspension of deportation where hardship to the applicant is taken into consideration. "Extreme hardship" to an alien herself cannot be considered in determining eligibility for a section 212(i) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

A review of the all the factors presented, and the aggregate effect of those factors, indicates that the applicant's spouse would suffer hardship due to separation. The applicant has failed, however, to show that her qualifying relative would suffer extreme hardship over and above the normal social and economic disruptions involved if the applicant was not permitted to enter the United States at this time. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely 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.