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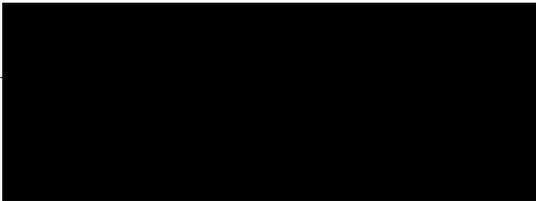
IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B) and 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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was determined 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 more than one year. The applicant entered the United States in 1990 pursuant to a valid student visa and subsequently violated his status. In 1993, the applicant applied for asylum benefits under an assumed name. His asylum application was subsequently denied and the applicant was ordered removed from the United States. The applicant failed to depart from the United States as ordered and remained in this country illegally until October 2001. The applicant is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative. He 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 reside in the United States with his spouse, parents and children.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated June 30, 2004.

On appeal, counsel states that the application evidences extreme hardship imposed on the applicant's wife, children and lawful permanent resident parents who have lived in the United States for a long time. Counsel indicates that there were extenuating circumstances existing when the applicant overstayed in the United States and the applicant voluntarily revealed his immigration history to an officer when interviewed. Counsel further asserts that one of the essential purposes for the waiver of inadmissibility is to encourage family unification. *Form I-290B*, dated July 23, 2004. In support of these assertions, counsel submits a brief; affidavits of the applicant's mother, father and spouse; verification of the employment of the applicant's father and spouse; copies of medical records pertaining to the health of the applicant's mother and father; medical reports for the applicant's spouse and child from India; a letter from the school of the applicant's child; medical records for the applicant; copies of identity and financial documents for the qualifying relatives and other family members and copies of paperwork relating to the property owned by the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The AAO acknowledges counsel's submission of a Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal on behalf of the applicant and confirms that, in order to legally gain admission to the United States, the applicant requires approval of a Form I-212 in addition to the instant application. The AAO notes, however, that the Form I-292 Decision page announcing the decision states that the officer in charge (OIC) is denying the applicant's Application for Waiver of Ground of Excludability (Form I-601). In addition, the focus of the discussion and the final determination of the OIC contained therein address only the applicant's waiver application. Since the AAO is charged with reviewing an appeal from the OIC decision, the AAO likewise focuses on the Form I-601 application and arrives at a decision solely regarding appeal of the Form I-601 application.

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

- (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.

Section 212(i) of the Act provides:

- (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.

Section 212(a)(9)(B) of the Act 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.

....

(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.

In the present application, the record indicates that the applicant entered the United States pursuant to a valid student visa on or about September 14, 1990. The applicant failed to embark on the education for which he had been granted admission to the United States and therefore violated his lawful immigration status and overstayed his authorized stay in this country. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until October 5, 2001, the date of his departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one

year. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of his departure.

In addition, the record reflects that the applicant previously attempted to procure asylum benefits, a benefit under the Act, by filing an asylum application under an assumed name and date of birth, an act that constitutes a willful misrepresentation of a material fact. While the decision of the OIC is based solely on a finding of inadmissibility resulting from unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, the AAO further finds the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. This finding is supported by both the facts of the case and the brief submitted by counsel which urges the AAO to consider the actions of the applicant while in the United States "as one fraud only rather than several different misrepresentations." *Brief in Support of [REDACTED] I-601 Appeal*, 4, dated July 23, 2004. The AAO notes that while the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act barred the applicant from seeking admission within ten years of the date of his departure, inadmissibility under section 212(a)(6)(C)(i) of the Act results in a permanent bar to admission absent approval of an application for waiver.

Section 212(a)(9)(B)(v) and 212(i) waivers of the bar to admission resulting from violations of sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act respectively are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) and 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse and/or parents. 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).

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

The AAO notes that counsel provides evidence of hardship that would be imposed on the children of the applicant if the application for waiver is denied. *See Letter from [REDACTED] and [REDACTED]* dated July 13, 2004. The AAO notes that the children of the applicant are not qualifying relatives under sections 212(i) and 212(a)(9)(B)(v) of the Act. Any hardship suffered by the applicant's children, therefore, is considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant's spouse and/or parents. Moreover, the AAO reiterates that hardship suffered by the applicant himself is not a consideration under sections 212(i) and 212(a)(9)(B)(v) of the Act and cannot be weighed in the absence of documentation or articulation from counsel establishing how the identified hardship imposes further hardship on the qualifying relative. *See Letter from [REDACTED] MD*, dated July 13, 2004

(stating that the applicant suffered from depression and panic attacks prior to his departure from the United States).

Counsel contends that the applicant's spouse and parents would suffer extreme hardship if they relocated to India in order to remain with the applicant. Counsel submits an affidavit of the applicant's spouse indicating that she has visited the applicant since he returned to India in 2001 and has attempted to locate employment there for herself. *Sworn Affidavit of* [REDACTED] dated July 15, 2004. The applicant's spouse states that she was unable to locate employment because she has only a high school education and has never worked in India. *Id.* at 2. In addition, the applicant's spouse reports that she and her child became ill while visiting India owing to their physical lack of familiarity with conditions in the applicant's home country. The applicant's spouse indicates that the water is contaminated in India and that the air pollution caused her to suffer from fever and diarrhea. *Id.* The applicant's spouse states that medical care is inadequate in India and that the family would not be able to afford to live in a larger city in order to be closer to medical facilities. *Id.* The record reflects that the applicant's parents suffer from various medical conditions and therefore, their ability to access sufficient medical care is also important. The applicant's father states that he would be unable to travel to India to visit his son owing to his age, health and financial situation and that if he remains in India for a prolonged period, he will be deprived of the comforts and necessities available in the United States. *Sworn Affidavit of* [REDACTED] dated July 15, 2004. Moreover, the applicant's spouse reports that her children do not speak Punjabi or Hindi fluently and that they will suffer as a result of leaving their friends thereby inflicting hardship on the applicant's spouse. *Sworn Affidavit of* [REDACTED] at 4.

While relocation to India may impose extreme hardship on the applicant's spouse and/or parents, the record fails to establish that the applicant's spouse and/or parents would suffer extreme hardship if they remain in the United States in order to maintain employment and access to adequate medical facilities. Counsel contends that the applicant's spouse suffers emotional and financial hardship as a result of separation from her spouse. Counsel provides documentation establishing that the applicant's father suffers from diabetes, allergies, degenerative joint problems and eye problems that inhibit his ability to drive. *Sworn Affidavit of* [REDACTED] at 2. See also *Letter from* [REDACTED] MD, dated July 13, 2004 (stating that the applicant's father was treated by the writer for diabetes, peripheral vascular disease and hyperlipidema). The applicant's mother indicates that she suffers from blood pressure and thyroid problems. *Sworn Affidavit of* [REDACTED] dated July 16, 2004. While counsel contends that these medical conditions require the applicant's spouse to provide care for her two children and the applicant's parents, the record does not establish the nature and/or extent of the care required as a result of the medical conditions of the applicant's parents. Counsel contends that the applicant's father requires close monitoring and since he is unable to drive, the applicant's spouse must drive him to his medical appointments as well as to work. *Brief in Support of* [REDACTED] I-601 Appeal at 5. The record, however, fails to establish that the applicant's father is unable to obtain alternative transportation when the applicant's spouse is unavailable. Indeed, as the record reflects that the applicant's spouse has now visited India for an extended period of time on at least two occasions since the applicant's departure, it must be inferred that alternative transportation have been engaged by the applicant's father in the past.

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). For example, *Matter of*

*Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *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 AAO notes that 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. The AAO recognizes that the applicant's spouse and/or parents endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion 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 spouse and/or parents caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, however, 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 sections 212(i) and 212(a)(9)(B) 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.