



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

AB

FILE: [REDACTED] Office: NEW DELHI

Date: NOV 29 2006

IN RE: [REDACTED]

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

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 Acting Officer in Charge (Acting OIC), New Delhi denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] Ms. [REDACTED] is a native and citizen of India who entered the United States on October 26, 1996, as B-2 visitor for pleasure, departed the United States on December 7, 2002, and applied for a K-1 fiance visa on July 21, 2003. In order to join her U.S. citizen (USC) fiance, [REDACTED] (Mr. [REDACTED] in the United States the applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for having been unlawfully present in the United States for more than one year, departing, and then seeking admission within 10 years of that departure.

As a result of her unlawful presence and subsequent departure, the Acting OIC found the applicant to be inadmissible to the United States. *OIC's Decision*, dated March 27, 2005. The Acting OIC also found the applicant inadmissible 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 having sought to procure admission into the United States by fraud or willful misrepresentation. The Acting OIC found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, the applicant submits a letter and additional documentation. The record includes the following: two statements from Mr. [REDACTED], one dated December 26, 2003, and one dated May 15, 2005; photographs of the couple; documentation relating to Ms. [REDACTED] passport; documentation relating to Mr. [REDACTED] heart condition; and correspondence between Ms. [REDACTED] and Mr. [REDACTED]. The AAO reviewed the entire record in arriving at a decision on the appeal.

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.

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.

As a preliminary matter, the AAO finds that the applicant is not inadmissible under 212(a)(6)(C)(i) of the Act. Ms. [REDACTED] entered the United States as a visitor for pleasure on October 26, 1996. She stated that she came to at the request of a friend of her father's. She admitted to the consular officer that about two days after she arrived in the United States that she began working for this family as a housekeeper. The AAO finds that there is not sufficient evidence in the record to find that Ms. [REDACTED] had an immigrant intent when she applied for the visitor's visa and when she told the immigration inspector at the port of entry that she was coming to the United States to visit a sick uncle.

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.

The record reflects that Ms. [REDACTED] initially entered the United States on October 26, 1996 as a B-2 visitor for pleasure. She was given until April 24, 1997 to remain. She remained here until December 7, 2002. Therefore, she accrued more than one year of unlawful presence, then departed the United States, and is now applying for admission to the United States within ten years of her departure.

A section 212(a)(9)(B)(v) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant is only considered insofar as it may affect her qualifying relative, in this case, the applicant's USC husband.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an

applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties in the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

The evidence submitted is insufficient to show that denial of Ms. [REDACTED] Form-601 would result in extreme hardship to her U.S. citizen fiancé. The applicant's fiancé, Mr. [REDACTED] asserts that he will suffer extreme hardship if he moves to India to avoid separation from Ms. [REDACTED] because of his health. The record shows that Mr. [REDACTED] had a heart attack in about 1998 that resulted in memory loss. The letter from the doctor who administered Mr. [REDACTED] a stress test indicates that there are no abnormalities in his heart. *See letter from Dr. [REDACTED] dated March 22, 2000.* This documentation does not indicate that Mr. [REDACTED] suffers from a condition for which he could not obtain treatment in India. Mr. [REDACTED] asserts that there is no ambulance service in India and that his health insurance will only pay for emergency care in another country. He does not submit documentation to support these assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Mr. [REDACTED] asserts that there is no work for him in India and that he owns a small business in the United States. While existing economic conditions in India are considerations in determining extreme hardship, the applicant has not submitted documentation about these conditions or evidence of how these conditions would affect her husband. The applicant does not submit documentation demonstrating why someone in her husband's situation would be unable to find employment in India. In addition, the applicant did not submit any documentation relating to her husband's business in the United States to demonstrate that moving to India would result in extreme hardship to him. *Matter of Soffici*.

Other than statements from the applicant's husband, in which he notes his love for his wife, (*See Mr. [REDACTED] statements*), no objective evidence was submitted to supplement Mr. [REDACTED] claim of extreme hardship. Although it is clear that her husband would suffer if she remains in India and he remains in the United States, or if he leaves his business and goes to live in India, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation or relocation on Mr. [REDACTED] while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does not meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), describing extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation; and *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), holding that the uprooting of family and separation from friends

does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure hardship if he remains in the United States separated from the applicant, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests 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.