

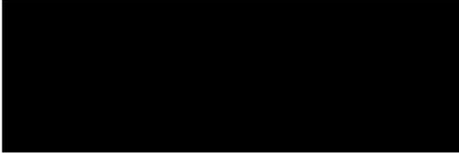
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

113



FILE:



Office: NEW DELHI, INDIA

Date:

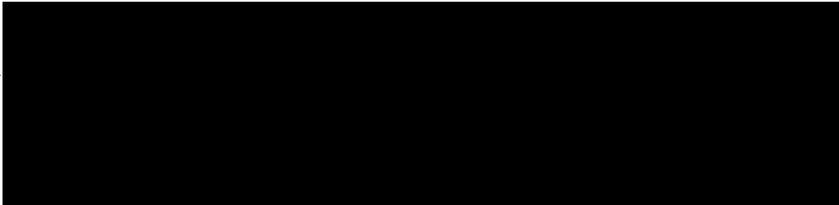
APR 17 2007

IN RE:



PETITION: 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 PETITIONER:



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 (OIC) of the New Delhi, India office denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of India, was found inadmissible to the United States under 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 is the spouse of a United States citizen, and 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 return to the United States to join his wife and daughter.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that the OIC erred in denying the application. In her July 12, 2005 appellate brief, counsel contends that the OIC summarily dismissed the medical conditions of the applicant's daughter as non-consequential to the disposition of the waiver application.

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that he first entered the United States in 1990. The record is unclear as to the date of the applicant's most recent entry into the United States. According to the applicant's Form G-325A and interview notes from the officer conducting the waiver interview with the applicant, the beneficiary entered the United States in 1990. However,

according to the OIC's decision, the applicant also stated that he entered the United States on a crew visa in 1991. Other documentation in the file indicates that his entry may have occurred on October 4, 1987.<sup>1</sup> The date of actual entry is not, however, material to the disposition of this appeal.<sup>2</sup>

Regardless of the date of entry, the record is clear that the applicant did not rejoin his ship. Rather, he remained in the United States and applied for political asylum. After a denial and several appeals, his application for political asylum was finally denied in 1996. He did not, however, immediately depart the United States. Rather, he returned to India in 2002.

Accordingly, the OIC found the applicant inadmissible based upon the nearly three-year period of time that he was unlawfully present in the United States between April 1, 1997 (the date the unlawful presence provisions of the Act were enacted) and his 2002 return to India. As he had resided unlawfully in the United States for more than one year and then sought admission within ten years of his last departure, the OIC correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

The record contains many references to the hardship that the applicant's daughter will suffer if the applicant is not permitted to re-enter the United States. However, section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant or his daughter will face cannot be considered, except as it may affect the applicant's wife.

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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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 alien 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 to U.S. citizens or lawful permanent residents in the United States, family ties outside 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

<sup>1</sup> See Form I-687, Application for Status as a Temporary Resident.

<sup>2</sup> As noted *infra*, the beneficiary did not begin accruing unlawful presence until April 1, 1997, the date the unlawful provisions of the Act were enacted.

availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's wife is a forty-year-old citizen of the United States. She has been a citizen of the United States since 2000. She and the applicant have been married since June 25, 2000. They have a seven-year-old daughter, born March 23, 2000.

The record contains two affidavits from the applicant's wife. The first affidavit, May 28, 2003, stated, in its entirety, the following:

I am writing this letter to inform you that I have a 3-year-old daughter. I am not able to work because there is no one to take care of her while I am at work. I can't afford a babysitter. My daughter misses her dad a lot. I can't leave her alone as she feels threatened that I might leave her. I need my husband as soon as possible. I am facing a lot of hardships without him. Please issue him a visa as soon as possible.

I hope my request will be given a favorable consideration.

In her second affidavit, dated July 2, 2003, the applicant's wife stated that she is unable to work because she has no family or friends who can take care of her daughter; that her daughter feels threatened every time she leaves and that she feels this is due to the separation from her father; that her daughter suffers from amebiasis and cannot live in India; that the cost of treating her daughter's illness in India would be extraordinarily high; that without her husband she is living day-to-day and barely making it; that she wants her daughter to obtain her education in the United States, but that it would be unfair for her to sacrifice her father's companionship to obtain this benefit; that her separation from her husband has been devastating; that she cannot visit her husband in India due to her daughter's illness; that she finds it difficult to participate in any organizations or events at her church/temple; that her husband should be taking care of her; that, in her culture, a woman living alone, such as herself, is considered unwanted, low-class, and bad, and that she therefore feels uncomfortable in her community; that relocating her daughter to India would negatively impact her daughter's English skills; and that family, friends, and acquaintances all find it unacceptable for the couple to be living apart.

As further evidence of the hardship the family would face, the record contains a statement from the [REDACTED] dated May 3, 2003, which states that the applicant's daughter suffered abdominal pain while in India; that she suffered a "repeated attack of amebiasis;" and that the climate of India is not suitable for her medical problem.

The record also contains a printout from the website of the Centers for Disease Control regarding amebiasis.

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 wife will face extreme hardship if the applicant is refused admission. Particularly if she remains in the United States, the record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain of visiting the applicant in India and the emotional hardship of separation, are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO also is not persuaded by statements regarding the severity of the applicant's daughter's illness. The printout from the Centers for Disease Control indicates that amebiasis is treated by the administration of antibiotics. The physician's statement submitted by the applicant states simply that India's climate is unsuitable for the applicant's daughter. It does not indicate that the antibiotics used to treat amebiasis are unavailable in India. Moreover, and as noted previously, a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent; Congress specifically excluded extreme hardship to a United States citizen or lawful permanent resident child. The applicant's wife is the only qualifying relative in this case.

The AAO finds counsel's assertion that because there is a possibility such feelings may one day lead to more severe medical conditions in the future, the waiver should be granted, to lack substance. There is no evidence in the record from a qualified professional to document the contention that the applicant's wife is experiencing depression or that any emotional loss she is feeling is beyond that experienced by others in her situation. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nor does the AAO find that the financial strain caused by the separation constitutes extreme hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9<sup>th</sup> Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable

aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States permanent resident spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

**ORDER:** The appeal is dismissed. The waiver application is denied.