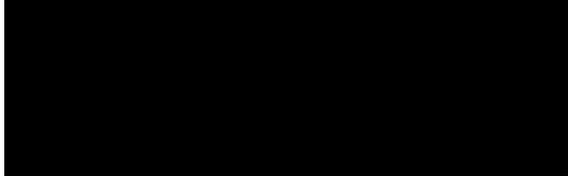


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U.S. Citizenship  
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Office: NEW DELHI, INDIA

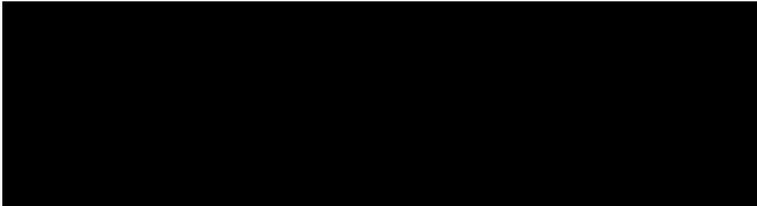
Date: FEB 12 2007

IN RE:



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:



PHOTOCOPY

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge (OIC), New Delhi, India. The matter 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 who 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 more than one year and seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant is married to a naturalized citizen of the United States and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen spouse.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated July 17, 2006.

On appeal, the applicant, through counsel, asserts that the denial of the applicant's admission into the United States would result in extreme hardship to his United States citizen wife. *Brief attached to Form I-290B*, filed September 14, 2006.

The record includes, but is not limited to, counsel's brief, a statement from the applicant's spouse, the applicant's marriage certificate, and a psychological evaluation of the applicant's wife by Dr. [REDACTED]. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 on April 15, 2002, Ms. [REDACTED], a United States citizen, filed a Petition for Alien Fiancé(e) (Form I-129F) for the applicant, which was approved on July 18, 2002. On March 7, 2003, the applicant entered the United States on a K1 fiancé visa, in order to marry Ms. [REDACTED] and they were married on March 30, 2003, in Sacramento, California. On April 14, 2003, Ms. [REDACTED] filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 7, 2003, Ms. [REDACTED] wrote to Citizenship and Immigration Services (CIS) requesting that the petition she filed on the applicant's behalf be withdrawn. On April 9, 2004, the Sacramento, California, District Director, denied the Form I-485, finding the application was abandoned because the applicant failed to appear for his February 9, 2004 adjustment interview. On January 16, 2004, the applicant divorced Ms. [REDACTED]. On February 15, 2004, the applicant married Ms. [REDACTED], a naturalized United States citizen. On August 9, 2004, Ms. [REDACTED] filed a Form I-130 for the applicant, which was approved on August 24, 2004. The applicant departed the United States on May 10, 2005. On December 23, 2005, the applicant filed a Form I-601. On July 17, 2006, the OIC, in New Delhi, India, denied applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his United States citizen wife. Additionally, the OIC found the applicant accrued unlawful presence from April 9, 2004, the date that his Form I-485 was denied, until May 10, 2005, the date of the applicant's departure from the United States. The applicant is attempting to seek admission into the United States within 10 years of his May 10, 2005 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.

A section 212(a)(9)(B)(v) 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon deportation is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that the applicant's spouse would face extreme hardship if she relocated to India in order to remain with the applicant. The applicant's spouse states all "[her] family is in the United States. They are all well settled. [H]er husband has his uncle and his family and they are also well settled." *See Statement by Ms.*

*Pardaman D. ██████████*, dated March 10, 2006. She claims that her husband is a Sikh "and Sikhs are systematically persecuted in India." *Id.* She states that "[a]fter going through this ordeal, [she] has developed severe mental depression, which caused [her] hopeless [sic] and suicidal. [She] needs some one [sic] who can look after [her] at this difficult time...[Her] doctor gave [her] antidepressant medication and told [her] it will take long [sic] time to recover." *Id.* In February 2006, the applicant's wife was diagnosed with Major Depression and was treated with antidepressant medication and psychotherapy. *See letter from Dr. ██████████*, dated February 28, 2006. In August 2006, Dr. ██████████ diagnosed the applicant's wife with Major Depressive Disorder. *See Psychological Evaluation of Ms. ██████████ by Dr. ██████████* dated August 28, 2006. Based on an interview conducted by Dr. ██████████ Dr. Wright states the applicant's wife "is unable to contemplate life without her husband. Her functional capacity and life satisfaction are severely impaired by the distress associated with her current life circumstances." *Id.* Dr. ██████████ states the applicant has "conveyed a deep sense of despair and hopelessness...[and she] regularly contemplates suicide. Although she denied immediate intent." *Id.* The AAO notes that the applicant's wife also had a difficult time coping with her first divorce. Dr. ██████████ states, "In late 2003, Ms. ██████████ was informed by her husband that he was seeking a divorce. He explained that he was returning to live with his ex-wife...She was devastated by the loss of her marriage, and feared that the humiliation associated with her divorce would ostracize her from her community and extended family." *Id.*

The AAO finds that, based on her history of emotional and psychological problems, the applicant has demonstrated extreme hardship to his wife if she remains in the United States without the applicant; however, it has not been established that the applicant's wife could not join the applicant in India, which is her native country. Since the applicant's wife's depression is primarily caused by their separation, if the applicant's wife moves to India then the depression would presumably no longer be an issue. The applicant's wife would not be alone in India, since the applicant and his family reside there. The AAO notes that the applicant's wife made vague statements to Dr. ██████████ regarding her mother suffering from health problems, but there was no evidence submitted demonstrating that the applicant's wife takes care of her mother or how leaving her mother would result in extreme hardship to her. *See Psychological Evaluation of Ms. ██████████ by Dr. ██████████* at page 2. The applicant's wife's mother is not a qualifying relative so any hardship she would experience is not relevant, except as it may affect her daughter. Additionally, the applicant's wife failed to provide any evidence that she could not obtain a job in India or evidence that she could not receive medical treatment in India for her depression.

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. The AAO recognizes that the applicant's wife will endure, and has endured, hardship as a result of separation from the applicant; however, she has not demonstrated extreme hardship if she were to return to India.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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(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.