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FILE:

Office: NEW DELHI, INDIA Date:

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: 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, New Delhi, India, denied the waiver application, and it 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 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. § 212(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 applicant is the spouse of a U.S. citizen and the father of U.S. citizen children. 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 and children.

The acting 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 Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated March 28, 2005.

The record reflects that, on April 21, 1989, the applicant was admitted to the United States as a B-1 nonimmigrant visitor. The applicant remained in the United States after his nonimmigrant status expired on August 31, 1989. On April 5, 1996, the applicant married [REDACTED], a U.S. citizen. On May 31, 1996, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) filed on his behalf by [REDACTED]. On December 20, 1996, the applicant's Form I-485 was terminated after he and [REDACTED] failed to attend the interview. On September 22, 1997, the applicant and [REDACTED] divorce was finalized. On February 6, 1998, the applicant filed a second Form I-485 claiming that he was entitled to adjustment of status as an immediate relative, despite the termination of his previous Form I-485 and divorce from the petitioning spouse. On July 1, 1999, the Form I-485 was denied. On November 3, 1999, the applicant married [REDACTED], a U.S. citizen. On April 18, 2000, [REDACTED] filed a Form I-130 on behalf of the applicant. On July 7, 2000, the applicant was placed into immigration proceedings. On April 20, 2001, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to surrender for removal or depart from the United States. On February 8, 2001, the Form I-130 was approved. On May 17, 2001, the applicant filed a third Form I-485 based on the second approved Form I-130. On March 3, 2003, immigration officers apprehended the applicant. On March 3, 2003, the applicant was removed from the United States and returned to India where he has since resided. On December 12, 2003, the applicant appeared at the U.S. Embassy New Delhi, India. The applicant testified that he had remained in the United States without authorization from August 1989 until March 3, 2003. The applicant also testified that he had married [REDACTED] in order to remain in the United States.

On December 22, 2003, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant contends that the applicant's wife and children are suffering extreme hardship in the United States without him and would suffer extreme hardship if they were to join the applicant in India. *See Applicant's Brief* dated April 25, 2005. In support of these assertions, the applicant submitted the referenced brief, a copy of an executed Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and copies of birth certificates for his and [REDACTED] children. The entire record was reviewed and considered in rendering a decision in this case.

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 acting officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to being unlawfully present in the United States for more than one year. The applicant does not contest the acting officer in charge's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect Ms. Shah, the only qualifying relative.

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. 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 availability of medical care in the country to which the qualifying relative would relocate. *Supra.* at 566. The BIA has held:

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record reflects that [REDACTED] is a U.S. citizen by birth [REDACTED] has a ten-year old daughter from a previous relationship who is a U.S. citizen by birth. The applicant and [REDACTED] have a five-year old son and a four-year old son who are both U.S. citizens by birth. The applicant is in his 40's, [REDACTED] is in her 20's and [REDACTED] may have some health concerns.

The acting officer in charge's decision noted that the applicant was also inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A) and that he should have filed a Form I-212. The acting officer in charge's decision also stated that if the Form I-212 had been filed it would have been approved due to the favorable factors outweighing the unfavorable factors in the applicant's case. The applicant contends that he filed a Form I-212 and that, since the Form I-212 was filed, it should have been approved. The applicant also contends that, since the Form I-212 should have been approved, the Form I-601 should be approved because the acting office in charge had failed to grant him the benefits to which he was entitled under the Form I-212. While the AAO notes that the applicant, on appeal, submits a copy of a signed Form I-212, it finds no evidence that the applicant ever filed the Form I-212. Therefore, even if the applicant were entitled to relief, no application has been made for relief pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The applicant's assertion that the Form I-601 should be approved because the Form I-212 was approvable does not have a bearing on the matter currently before the AAO. The AAO finds that the applicant's assertions are unpersuasive. Applications for permission to reapply for admission do not require a similar standard as applications for waivers pursuant to section 212(a)(9)(B)(v) of the Act. Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

....

(ii) Other aliens.- Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or

subsequent removal or at any time in the case on a alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

An applicant for permission to reapply for admission must show that the favorable factors in his case outweigh the negative factors in his case. There is no requirement, unlike an application for a waiver pursuant to section 212(a)(9)(B)(v) of the Act, that an applicant establish that a qualifying relative would suffer extreme hardship.

The applicant, in his brief, asserts that [REDACTED] separation from him would result in extreme hardship because he is the sole breadwinner of the family and, during the few years since his departure, [REDACTED] has suffered various mental and financial hardships, as a result of which she has become a patient of mental depression and has to make frequent visits to the doctor. The applicant states that, in order to repay family debts, [REDACTED] has had to sell off various household articles and goods. He states that despite this fact a large debt remains and [REDACTED] is totally dependent upon Public Assistance benefits, which do not provide sufficient income to repay the family's debts. He states that [REDACTED] is uneducated and cannot afford the expenses associated with daily needs and doctor's fees. He states that his stepdaughter has started to show signs of psychological disturbance. In a March 21, 2004 letter, the applicant states that that standard of living of the family members has gone down significantly and he owes money to friends and relatives who have been of immense moral, emotional and financial support to his family. He states that [REDACTED] has suffered from severe anxiety and depression, as well as hypertension and other mental disorders and gets sudden panic attacks. [REDACTED], in her affidavit, states that she cannot live without the applicant and she misses him very much, as do the children. She states that the children need a father figure and she has suffered a lot. She states that at night she cannot sleep because she thinks about the applicant and even gets panic attacks. She states that she needs the applicant back before she ends up in the hospital and that both she and her daughter are in counseling. She states that she feels bad and depressed. She states that she cannot afford to buy anything for her children or pay her bills, which the applicant did for them prior to his departure. She states that she needs her husband in her life because she loves him with all her heart and soul.

A letter from an internal medicine doctor indicates that, in March 2004, [REDACTED] was currently under his care. It states that [REDACTED] is suffering from severe anxiety and depression as well as hypertension. The letter indicates that [REDACTED] is unable to sleep and function or to cope with the demands of her three young children. Finally, it states that it would be very helpful if the applicant were allowed to join her as soon as possible. While the medical documentation indicates that the applicant is suffering from severe anxiety, depression and hypertension, the documentation does not indicate how long she has been under the doctor's care, what type of treatment she is receiving, whether she requires long-term medical care, what the prognosis is for her condition, whether her treatment requires the presence of the applicant or that she would be unable to receive appropriate medical treatment in the absence of the applicant. The medical letter also fails to indicate the reason(s) underlying [REDACTED] medical condition or to provide details as to any treatment she is

undergoing or will require in the future. The medical letter is, therefore, insufficient documentation of [REDACTED]'s medical problems. The AAO also notes that the record contains no evidence in support of [REDACTED] claim that both she and her daughter are undergoing counseling.

While documentation indicates that the family debt is high and [REDACTED] was receiving public assistance benefits in 2004, there is no evidence in the record to indicate that [REDACTED] is uneducated or unable to support herself and her family. The Biographical Information Sheet (Form G-325) indicates that, from January 1998 until December 1999, [REDACTED] was employed as a secretary. As discussed above, the medical letter can be given little weight and there is no other evidence in the record to indicate that [REDACTED] is unable to perform daily activities or work duties due to any illness. The record indicates that [REDACTED] has friends and family members in the United States, such as her parents, who may be able to assist her physically and financially in the absence of the applicant. While it is unfortunate that [REDACTED] has essentially become a single parent and professional childcare may involve an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] even when combined with the emotional hardship described below.

As discussed above, there is no evidence in the record to indicate that [REDACTED] or her children suffer from a physical or mental illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon removal or that would be exacerbated by the applicant's absence. While the AAO acknowledges that [REDACTED] may be affected emotionally by the separation from the applicant and her children's separation from the applicant, this is hardship that is commonly suffered by aliens and families upon removal. Moreover, according to the record [REDACTED] has friends and family members in the United States who may be able to support her physically and emotionally in the absence of the applicant. The applicant asserts that the acting officer in charge erred in determining that there was no evidence in the record to support a finding that [REDACTED] was not suffering from a physical or mental illness because he failed to consider the medical letter submitted with the Form I-601. As discussed above, the AAO finds that the medical letter is insufficient evidence that [REDACTED] suffers from a physical or mental illness that would cause her extreme hardship in the applicant's absence. The applicant also asserts that he could provide additional documentation of [REDACTED]'s physical and mental illness. However, the applicant has been given an opportunity to rebut the acting officer in charge's findings before the AAO and has failed to provide additional evidence on appeal.

The applicant, in his brief, asserts that [REDACTED] would suffer extreme hardship should she chose to join him in India because she has resided in the United States her entire life, her friends and relatives are situated in the United States, conditions in India are completely alien to her and the children, and it would not be conducive for them to relocate to India. The applicant states that there is a great difference in quality of life and standard of living between the United States and India, and that it would be extremely difficult for [REDACTED] and the children to relocate to India. Finally he states that, considering [REDACTED]'s state of mental health, suitable medical care could not be provided in India. The applicant, in his affidavit, states that the children are very young and, as such, need the best education options in the United States

Having analyzed the hardships the applicant claims [REDACTED] will suffer if she were to accompany the applicant to India, the AAO finds that they do not constitute extreme hardship. There is no evidence in the

record to suggest that the applicant and [REDACTED] would be unable to obtain *any* employment in India. While the employment they may be able to obtain may not be comparable to the employment they have in the United States, economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir.1986)*. As discussed above, there is no evidence in the record to suggest that [REDACTED] or her children suffer from a mental or physical illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families following removal and there is no evidence that any condition from which they may suffer could not be treated in India. While the hardships faced by [REDACTED] with regard to her and the children's adjustment to a new culture, economy, environment, separation from friends and family and an the inability to obtain opportunities and living standards similar to those that are available in the United States are unfortunate, they are what would normally be expected by any spouse joining a removed alien in a foreign country. Additionally, the AAO notes that, as U.S. citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, M [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

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 spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. 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 (9th Cir. 1991)*, *Perez v. INS, 96 F.3d 390 (9th 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 therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The AAO notes that the applicant may also be inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A) and may need to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). Finally, the AAO notes that the applicant may also be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure immigration benefits under the Act by fraud. The applicant filed a Form I-485 based on his marriage to [REDACTED] a marriage, which he admits was entered into so that he could remain in the United States. Furthermore, the applicant filed a Form I-485 based on his marriage to [REDACTED] after his divorce from [REDACTED] had been finalized. As such, even after the applicant has remained outside the United States for a period of ten years he may need to file a Form I-601 pursuant to section 212(a)(6)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(iii).

ORDER: The appeal is dismissed.