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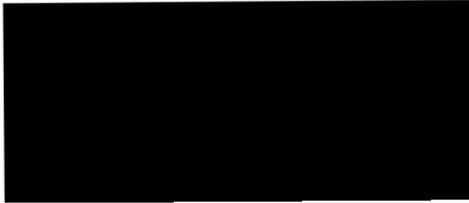
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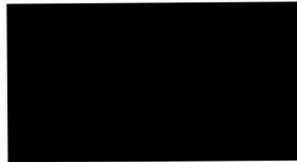
U.S. Citizenship
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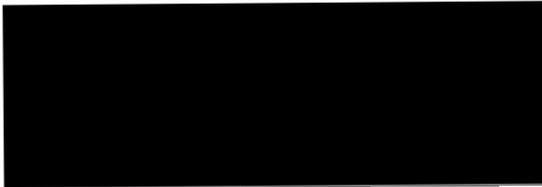
Date: **JAN 04 2007**

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:



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 Acting Officer in Charge, American Embassy, 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 wife and children.

The Acting Officer in Charge 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 Acting Officer in Charge*, dated March 31, 2005.

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. *Form I-290B*, filed January 8, 2002.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's spouse, birth certificates for the applicant's United States citizen children, and documents from the applicant's court proceedings before the Harlingen, Texas Immigration Court, the Board of Immigration Appeals (BIA), and the 5th Circuit Court of Appeals (5th Circuit). 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 the applicant entered the United States without inspection on or about January of 1991. The applicant filed an Application for Asylum (Form I-589), which was denied by an asylum officer and referred to an Immigration Judge. On December 9, 1994, the applicant married Ms. [REDACTED] who was a legal permanent resident at the time. The applicant's wife has since become a naturalized United States citizen. On September 22, 1995, an Immigration Judge denied the applicant's asylum application and ordered him deported to India. The applicant appealed the Immigration Judge's decision to the BIA. On November 18, 1997, the BIA dismissed the applicant's appeal, upholding the Immigration Judge's adverse credibility finding. On December 16, 1997, the applicant appealed the BIA decision to the 5th Circuit, which dismissed his appeal on February 11, 1999. The applicant departed the United States on March 17, 2001. On April 11, 2001, the applicant's Petition for Alien Relative (Form I-130) was approved. On January 8, 2002, the applicant filed a Form I-601 and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On March 31, 2005, the applicant's Form I-212 was granted; however, the applicant's Form I-601 was denied.

It is noted that the Acting Officer in Charge mistakenly determined that the applicant accrued unlawful presence from April 7, 1999, stating that was the date the 5th Circuit dismissed the applicant's appeal. *Decision of the Acting Officer in Charge*, dated March 31, 2005. However, the 5th Circuit dismissed the applicant's appeal on February 11, 1999. Therefore, the applicant accrued unlawful presence from February 11, 1999, the date the 5th Circuit dismissed the appeal, until March 17, 2001, 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 March 17, 2001 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 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. Counsel states that the applicant's spouse has resided in the United States since 1993, has owned her own business since August 17, 1999, and owns a home. Counsel claims that the applicant's spouse would be unable to keep her business open, because she could not find dependable employees. Counsel contends that when the applicant's children travel to India, their health is severely affected by the environment in India. *See Statements by* [REDACTED] dated April 22, 2005, and [REDACTED] dated May 17, 2005. The applicant's spouse states she has "created a safe haven for [her] children in this country, where they are happy and healthy, [she] would not want to return to live in India, as [her] children are US Citizens." *See Statement of* [REDACTED] dated May 26, 2005. Counsel further contends that since the applicant is a Sikh and his wife is a Christian, they would have difficulty living in India, which is not as tolerant on religious differences as the United States.

Counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States, maintaining her business and access to adequate health care and education for her children. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states that the store owned by the applicant's spouse is the sole income for the family, and that it is a "profitable" business. The AAO notes that the applicant's spouse has been running the store without the applicant's assistance since March 17, 2001, the date the applicant departed the United States. It does not appear that the applicant's spouse has experienced financial hardship as a result of the separation from the applicant. Further, beyond generalized assertions regarding country conditions in India, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, 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 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. In *Hassan, supra*, the 9th Circuit Court of Appeals 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. The AAO recognizes that the applicant's wife will endure, and has endured, hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical of 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 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.