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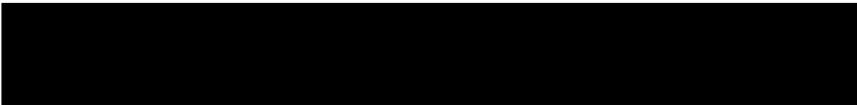
JAN 18 2007

IN RE:



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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge, New Delhi, India. The matter 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. § 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 applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse beyond what is normally experienced upon removal. The application was denied accordingly. *Decision of the Acting Officer-in-Charge*, dated March 28, 2005.

On appeal, the applicant's spouse asserts that she is suffering emotionally and financially. She also states that the applicant is suffering from kidney failure and in the near future will need a kidney transplant to survive. The applicant's spouse also submits additional documentation to support her application. *See Statement from Applicant's Spouse*, May 16, 2005.

The record indicates that the applicant entered the United States with a visitor's visa on October 19, 1999. The applicant remained in the United States until April 24, 2004. Therefore, the applicant accrued unlawful presence from when his authorized stay on his visitor's visa expired until April 24, 2004, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his April 24, 2004 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.

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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the India or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant's spouse states in her declaration, dated May 16, 2005, that the applicant has kidney failure in both of his kidneys and is currently undergoing treatment. She states that in the near future he will have to have a transplant to survive. The applicant's spouse submitted a medical certificate from India, dated April 25, 2005. The certificate states that the applicant is suffering from Chronic Kidney Disease, Stage V and he is on regular maintenance "Haemo Dialysis". As stated above, hardship to the applicant is not considered in a waiver application proceeding unless it causes hardship to the applicant's spouse. The AAO recognizes the seriousness of the applicant's disease, however the applicant's spouse did not make any assertions regarding the hardship she would suffer as a result of the applicant's disease progressing. The applicant is currently receiving treatment in India and no documentation was submitted to support the claims regarding the applicant needing a transplant in the near future. In addition, no documentation was submitted to show that the applicant was not receiving adequate treatment in India and if he does need a transplant that he would not be able to receive the transplant in India.¹

In her declaration, the applicant's spouse states that the applicant needs to be in the United States with his daughter and that she cannot handle raising her daughter on her own. She states that she is constantly stressed about her spouse's well being. She submitted no supporting documentation related to her emotional stress and the effects this stress is having on her every day life. The applicant must submit documentation to support her statements. Furthermore, the applicant submitted no evidence regarding the impossibility of her and her children relocating to India to be with the applicant. Therefore, a thorough review of the current record does not reflect that the applicant's inadmissibility will result in extreme hardship to the applicant's spouse.

¹ The AAO notes that a March 26, 2003 letter submitted by counsel requesting an expedited adjustment of status interview for the applicant's spouse indicates that the applicant and her spouse believed that "superior and more affordable treatment" for his medical condition would be found in India.

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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.

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 an 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.