

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

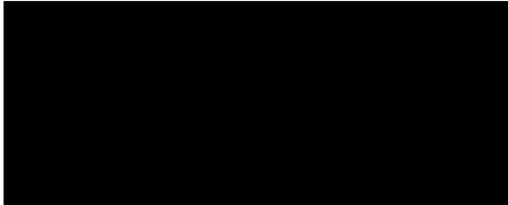
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



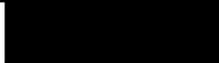
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

tl3



FILE:



Office: NEW DELHI, INDIA

Date: OCT 01 2007

IN RE:

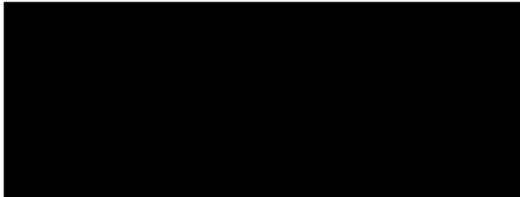
Applicant:



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 Officer-in-Charge (OIC), New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], 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. The applicant is married to a naturalized citizen, [REDACTED]. He sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the OIC denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the OIC, dated November 10, 2005.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. See DOS Cable, note 1. See also *Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., ~~INS, HQ IRT 50/5.12, 96 Act. 068~~ (Nov. 26, 1997).

The document in the record from the Consul General of the United States of America located in Mumbai, India, which is dated May 10, 2005, reflects that the applicant entered the United States without inspection in 2000 and voluntarily departed from the country on December 30, 2003. For purposes of calculating unlawful presence under section 212(a)(9)(B) of the Act, the applicant began to accrue time in unlawful presence from 2000 to December 30, 2003, accruing over three years of unlawful presence. The applicant triggered the ten-

¹ Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, [REDACTED] (April 4, 1998) [hereinafter *Virtue Memo Unlawful Presence*].

² See DOS Cable, note 1; and [REDACTED]

year-bar when he departed from the United States; and consequently is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

Section 212(a)(9)(B) of the Act provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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 waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and his children will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is his 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).

“Extreme hardship” to the applicant’s wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record fails to establish that the applicant's wife would endure extreme hardship if she remains in the United States without him.

██████████ indicates that she financially supports herself, her children, and her husband and pays for her mother's medicine and doctor visits. She states that her father and mother live in Texas and that her father earns enough money to care for himself, but does not earn enough to care for her mother, who is temporarily caring for the children while the applicant is in India. The letter from ██████████ conveys that ██████████ mother has received care since August 2004 for knee pain and a swollen foot.

The AAO finds that the applicant has not provided sufficient evidence to show that his wife would be unable to financially support her household in the United States and provide financial assistance to the applicant in India if her mother were to return to Texas and no longer care for the children. There is no documentation of ██████████ earnings, of her household expenses in the United States and those of her husband in India, or of the earnings and household expenses of ██████████ father. 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)).

Furthermore, courts in the United States have universally held that economic detriment alone is insufficient to establish extreme hardship. See, e.g., *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider). Additional factors are needed to combine with economic detriment in order to categorize ██████████ hardship as extreme.

As for demonstrating hardship as a result of family separation, the record contains a psychosocial assessment, dated December 2, 2005, by ██████████. In the assessment, ██████████ diagnosis of Ms. ██████████ is as follows: ██████████ Diagnosis on ██████████ nausea, acidity in stomach; ██████████ 50. It is noted that the assessment conveys that a score of 50 indicates great difficulty functioning, significant depression, etc.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment is based on three interviews between ██████████ and ██████████. The record fails to reflect an ongoing relationship between a mental health professional and ██████████ or any history of treatment for ██████████. Moreover, the conclusions reached in the submitted assessment, being based on three interviews, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering ██████████ findings speculative and diminishing the assessment's value in determining hardship.

In her affidavit, ██████████ states that she is undergoing therapy as a result of severe anxiety, depression, suicidal thoughts, anxiety, stress, and other symptoms caused by the denial of her husband's waiver application. She states that she worries about losing her job because she cannot concentrate. She indicates that her son and daughter miss their father, and her son misbehaves in the applicant's absence. ██████████ states that children without fathers develop behavioral problems.

The record contains affidavits from friends of the couple who describe the mental state of the applicant and his wife and their children. The AAO notes the similarity of the affidavits.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that the applicant has U.S. citizen children is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

██████████ is very concerned about separation from her husband and his separation from their children, as conveyed in her affidavit and the psychosocial assessment. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of ██████████ if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship which will be experienced by the applicant's wife, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*.

The present record is insufficient to establish that ██████████ would experience extreme hardship if she joined her husband in India.

The conditions in India, the country where the applicant's wife would live if she joined him, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

In her affidavit, [REDACTED] states that her children were born in the United States, are comfortable speaking English, are not familiar with the Indian way of life, and would be deprived of the quality of life to which they are entitled, including educational opportunities and medical care. [REDACTED] states that there is no place for them to stay in India since her husband lives with his parents and siblings and their children, and establishing a household elsewhere is not financially feasible. She states that violence between Hindus and Muslims in her husband's village makes it unsafe. [REDACTED] states that her mother has serious health problems (blood pressure, pain in her knee, a swollen leg, and acidity) and depends on her for help and to pay for medicine and doctor visits. She states that her mother cannot work.

In his letter, the applicant indicates that he is unemployed and stays in Parkhet Village with his father, who is a farmer with a limited income. The applicant states that his wife, who earns \$20,000 annually, would not find employment in India and would not adjust to India after living in the United States for six or seven years.

With regard to employment in India, federal court decisions indicate that the difficulties experienced in obtaining employment in a foreign country and the general economic conditions in that country are insufficient to establish extreme hardship. *See, e.g., Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the finding that hardship in finding employment in Mexico does not reach extreme hardship); *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985)) ("General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien."); *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir.1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment"); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment is not extreme hardship). Thus, the hardship Ms. Parmar may experience in finding employment in India would not be considered by the courts as "extreme."

Although the applicant states that his wife's living in the United States for seven years would make adjustment to India difficult, the AAO finds that such difficulties would be mitigated by the moral support of the applicant and his family. Furthermore, cultural readjustment was held not to constitute extreme hardship in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (difficulties of readjustment to Mexican culture and environment are not sufficient to establish extreme hardship); *Chokloikaew v. INS*, 601 F.2d 216, 218 (5th Cir. 1979) (no "extreme hardship" in readjusting to social and economic conditions in Thailand for alien who lived in United States for ten years); *Hernandez-Patino v. INS*, 831 F.2d 750, 754 (7th Cir. 1987) (readjustment of life in native country after having spent a number of years in the United States is not extreme hardship); and *Matter of Chumpitazi*, 16 I&N Dec. 629, 635 (BIA 1978) (referencing *Matter of Uy*, 11 I&N Dec. 159 (BIA 1965) (no extreme hardship where alien had to readjust to life in native country after having spent a number of years in the United States)).

Although hardship to the applicant's children is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship experienced by the applicant's wife, as a result of her concern about the well-being of her children, who are six and four years old, is a relevant consideration. [REDACTED] states that in India her children would be deprived of educational opportunities and medical care and the quality of life offered in the United States. In the psychosocial assessment, she indicates that the school in her husband's village goes up to the fourth grade, and attending high school requires traveling to Bharuch, which is 25 minutes away.

With regard to the education of a child, in *Prapavat v. I.N.S.*, 638 F.2d 87, 89 (9th Cir.1980), the Ninth Circuit stated that the hardship to the petitioners' United States citizen daughter, who was about five years old at the time of the Board's decision and is now almost six, must be considered. It stated that:

The child, born in this country, has spent her entire life here. She is enrolled in school, a factor of significance. See, e. g., *Wang*, 622 F.2d at 1348 n.7; *Jong Shik Choe v. I. N. S.*, 597 F.2d 168, 170 (9th Cir. 1979); *Urbano de Malaluan v. I. N. S.*, 577 F.2d 589, 595 n.5 (9th Cir. 1978). If her parents are deported, this American citizen child will be uprooted from her native country where she has spent her entire life, and taken to a land whose language and culture are foreign to her.

In *Ramos v. I.N.S.*, 695 F.2d 181, 187 n. 16 (5th Cir.1983) the Fifth Circuit noted the "great difference between the adjustment required" of infants going to a parent's homeland and school age children facing the same fate. In *Jara-Navarrete v. I.N.S.*, 813 F.2d 1340, 1342 (9th Cir.1986) the Ninth Circuit stated that U.S. citizen children must be given individualized consideration. In *Ravancho v. I.N.S.*, 658 F.2d 169, 175-77 (3d Cir. 1981) the court stated that consideration must be given to the effect of a move to the Philippines would have on an eight-year-old American citizen. In *In Re Kao & Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA held that to uproot the respondent's 15-year-old daughter at this stage in her education and her social development and to require her to survive in a Chinese-only environment would be a significant disruption that would constitute extreme hardship to her. The Ninth Circuit in *Casem v. INS*, 8 F.3d 700 (9th Cir. 1993), and cases cited therein, observed the difference between the adjustments required of very young children accompanying their parents to a foreign country and those faced by children already in school. *Matter of Andazola*, 23 I&N Dec. 319, 333 (BIA 2002).

The applicant's wife indicates that her children have grown up in the United States, are more comfortable speaking English than an Indian language, and would have difficulty adjusting to India. The AAO finds that the record suggests that the applicant's boy, who is six years old, would endure extreme hardship at this stage in his education and social development if he lived in India. However, this finding is not sufficient, in itself, to establish extreme hardship to [REDACTED] if she were to join her husband in India; additional hardship factors are missing.

[REDACTED]'s concern about the availability of health care in her husband's village fails to demonstrate extreme hardship. In *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985), the alien makes the conclusory statement that "[h]ealth care is for the most part unavailable in the [REDACTED] home town in Mexico and the cost for treatment where available is excessive." The court found that "such a claim is insufficient to constitute extreme hardship even if supported by competent evidence. See, e.g., *Bueno v. INS*, 578 F.Supp. 22, 25 (N.D.Ill.1983) (will consider availability of medical care nationwide)."

The AAO is not persuaded that the lower standard of living that [REDACTED] may confront in India constitutes

"extreme hardship." In *Hernandez-Patino v. INS, supra*, the Ninth Circuit upheld the BIA's finding that inadequate housing, water and electricity failed to constitute extreme hardship. The Ninth Circuit in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), found that the lower standard of living in Mexico does not rise to "extreme hardship." The Seventh Circuit in *Bueno-Carrillo v. Landon*, 682 F.2d 143, 145 (7th Cir. 1982), found no extreme hardship to the petitioner and his daughter on account of the inadequacy of the water, medical, and waste disposal systems that exist in Mexico. In *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit found the lower standard of living in the Philippines is not extreme hardship.

Although [REDACTED] states that violence between Hindus and Muslims in her husband's village makes it unsafe, the applicant presents no evidence of specific incidents of threats or violence directed against him or his family. "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciamba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted). 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)).

[REDACTED] states that her mother has serious health problems (blood pressure, pain in her knee, a swollen leg, and acidity) and relies on her for financial help. As previously stated, no documentation has been submitted of [REDACTED]'s income, her father's income, and their household expenses. Thus, no evidence supports Ms. [REDACTED]'s assertion that she is needed to financially assist her mother.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.