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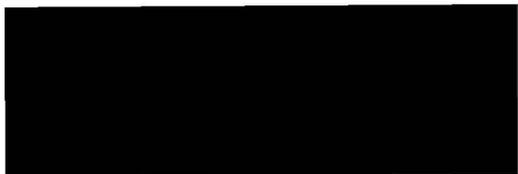
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE:

Office: NEW DELHI, INDIA

Date:

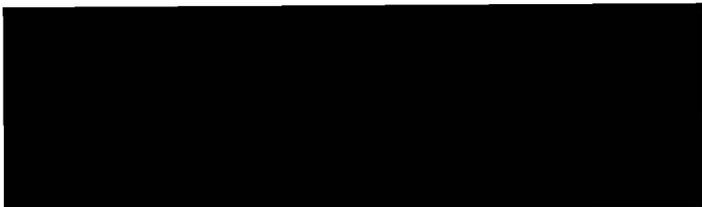
AUG 20 2008

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the 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 Officer in Charge (OIC), New Delhi, India, and 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. The applicant 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 after April 1, 1997. 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 U.S. citizen spouse.

The record reflects that the applicant was admitted to the United States on June 26, 1991 in B-2 visitor status with a period of authorized stay expiring December 25, 1991. The applicant remained in the United States beyond the period of authorized stay. On September 5, 1995, the applicant married [REDACTED] a U.S. citizen, who filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary on October 13, 1995. The applicant simultaneously filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On November 12, 1996, the applicant filed an Application for Asylum and Withholding of Removal (Form I-589). On January 6, 1997, the applicant was referred to removal proceedings before an immigration judge by the San Francisco Asylum Office. On June 11, 1997, the applicant was divorced from [REDACTED]. The Form I-130 petition was denied on November 24, 1997 for failure to appear at scheduled interviews. The Form I-485 application was subsequently denied on April 24, 1998.

Upon failure to appear at his scheduled hearing before the immigration court, the applicant was ordered removed in absentia from the United States on July 19, 2001. On August 5, 2002, the applicant filed a motion to reopen the removal proceedings. On March 6, 2002, that applicant married his current spouse, [REDACTED] a naturalized U.S. citizen, in the United States. On October 1, 2002, the applicant's motion to reopen was denied and the applicant again was ordered removed from the United States. The applicant appealed the decision to the Board of Immigration Appeals. On January 15, 2003, the applicant's spouse filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary. On February 7, 2003, after the applicant's appeal was denied, the applicant was removed from the United States to India. The Form I-130 petition was approved on June 7, 2004. On or about December 2004, the applicant filed an Application for Waiver of Ground of Excludability (Form I-601) and an Application for Permission to Reapply for Admission after Deportation (Form I-212).

On March 30, 2006, the OIC issued separate decisions denying the applicant's Form I-212 and Form I-601 applications. In denying the waiver application, the OIC concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative. *Decision of OIC Denying Form I-601*, dated March 30, 2006.

The applicant has appealed the OIC's decision denying his waiver application. On appeal, counsel contends that significant equities outweigh the single adverse factor, the applicant's overstay of his visa, warranting the favorable exercise of discretion. *Brief in Support of I-601 Waiver of Inadmissibility* at 2. Counsel asserts that the "sole" issue is whether the applicant has demonstrated that his wife will suffer extreme hardship if he is not allowed to return to the United States. *Id.* Counsel summarizes precedent decisions from the Board of Immigration Appeals and contends that a finding of extreme hardship is supported by these decisions. *Id.* at 4-6. Counsel states that the applicant's spouse, with her new baby, would suffer tremendously without the

applicant. *Id* at 10. He asserts that they own a home and a business, which the applicant's spouse has been forced to close temporarily in the applicant's absence. *Id* at 10. Counsel contends that the applicant's spouse depends on the applicant's financial contribution from the business. *Id*. Counsel also asserts that it will be very difficult for the applicant's spouse to find employment in India. *Id*.

The record contains, among other documents, a letter from the applicant's spouse dated December 19, 2006, a letter from the applicant's spouse's employer, a U.S. State Department report for India, medical records concerning the birth of the applicant's son, copies of family photographs, automobile insurance documents, bank records, and letters from friends and acquaintances. The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(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 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.

The record reflects that the applicant was admitted to the United States on June 26, 1991 in B-2 visitor status with a period of authorized stay expiring December 25, 1991. The applicant remained in the United States beyond the period of authorized stay until he was removed on February 7, 2003. Therefore, the applicant was unlawfully present from April 1, 1997 until February 7, 2003, a period in excess of one year. The applicant has not disputed that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or his child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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. *Id.* at 566.

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).

In addition, the Ninth Circuit Court of Appeals in reversing the denial of suspension of deportation to the petitioner in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States”, and that, “[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.” (Citations omitted), *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“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). Separation of family will be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is generally appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In her letter, the applicant’s spouse states that it is hardship for her to raise the couple’s child without the applicant. She indicates that she had to sell the applicant’s business, that she has to pay the mortgage and other expenses from her salary alone, and that it “is so hard to make ends meet month in and month out.” She asserts that being without the applicant, who has never seen his son, causes her emotional distress and that it is expensive to visit him in India.

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 faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant's spouse suffers emotionally in the applicant's absence, but the applicant has not demonstrated that this emotional hardship, when combined with other hardship factors, rises to the level of extreme hardship. The applicant's spouse asserts that it is difficult for her to pay all her expenses without the income from the applicant's business, but she has not demonstrated that she is experiencing financial hardship. The record shows that the applicant's spouse is employed and she has not demonstrated that she is unable to meet her financial obligations. Regardless, the mere loss of current employment or the inability to maintain one's present standard of living or pursue a chosen profession does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996). It is also noted that the applicant had already been ordered removed at the time he and his spouse were married, a relevant factor in finding that the applicant's spouse does not experience extreme hardship in his absence. *See Cervantes-Gonzalez*, 22 I&N Dec. at 566-67 ("the respondent's wife knew that the respondent was in deportation proceedings at the time they were married . . . [which] goes to the respondent's wife's expectations at the time they were wed . . . [and] undermine[s] the respondent's argument that his wife will suffer extreme hardship if he is deported.").

The hardship described by the applicant is the common result of removal or inadmissibility, and it does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The applicant also has not demonstrated that his spouse will suffer extreme hardship if she relocates to India. The AAO acknowledges that the applicant's spouse will have to abandon her employment if she chooses to relocate, but the general country conditions presented by the applicant are insufficient to support the claim that the applicant's spouse will be unable to secure employment in India. 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)).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has 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 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. *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.