



U.S. Citizenship
and Immigration
Services

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MAY 21 2008

Offi NEW DELHI, INDIA Date:

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Excludability 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 Officer in Charge, New Delhi, India, denied the Form I-601, Application for Waiver of Ground of Excludability under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). 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 31-year-old 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 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 entered the United States without inspection in 1996. He was placed in removal proceedings, and departed in February 2005 following an order of voluntary departure. The record reflects that the applicant's spouse, [REDACTED] is a 22-year-old citizen of the United States. They were married on December 2, 2002 in New York. The applicant's spouse filed a Petition for Alien Relative, Form I-130, on the applicant's behalf in March 2005. The applicant sought an immigrant visa in June 2005, based on the approved Form I-130. The applicant now seeks a waiver of inadmissibility in order to return to the United States.

The officer in charge found the applicant to be inadmissible and denied his waiver application. The director determined that the applicant had failed to establish that his spouse would face extreme hardship should the waiver be denied. The application was denied accordingly.

On appeal, the applicant, through counsel, states that the officer in charge erred in not considering all the relevant hardship factors in the aggregate. The applicant submits additional evidence, including evidence that his spouse is expecting a child in July 2008.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(I) has been unlawfully present in the United States for a period of more than 180 days but less than 1 years, voluntarily departed the United States ... and again seeks admission within 3 years of the date of such alien's departure ... is inadmissible.

(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 record indicates, and the applicant does not dispute, that the applicant was unlawfully present in the United States for a period of more than one year. The applicant began accruing unlawful presence on April 1, 1997 (the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) until his departure in February 2005. The consular officer's finding of inadmissibility is therefore affirmed. The question remains whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself or the applicant's child is not a permissible consideration under the statute.

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. *Id.* 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).

In support of his claim, the applicant submitted, in relevant part, statements from his spouse, relatives, and friends as well as a psychologist's report, medical records, a prospective employment letter, and the U.S. State Department Country Reports for India. The applicant maintains that his spouse would face extreme emotional and financial hardship should the waiver be denied. The applicant further maintains that his absence has caused great hardship to his son which, in turn, causes hardship upon his spouse. The applicant's spouse states that she is unwilling to relocate to India because, in part, her son had become ill on their visits to that country. The applicant's spouse is pregnant and expecting the couple's second child in July 2008. She resides in her parents' home. The applicant's spouse's parents provide her with financial support and assist her with child care.

The record reflects that the applicant's spouse would face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties faced by any other individual in her circumstances. 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). 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); *see also Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

The applicant's spouse, as a U.S. citizen, is not required to relocate to India. While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record does not contain evidence to show that the hardship faced by the applicant's spouse due to separation from the applicant rises to the level of extreme.

The AAO has considered the financial and emotional circumstances faced by the applicant's spouse. The AAO further notes the applicant's spouse's young age, the fact that she is originally from India (though a resident of the United States since the age of eight), the fact that she resides with her parents who provide her with financial and emotional support, and the fact that she has other relatives and friends in the United States. The AAO recognizes the applicant's claim that his spouse has no educational or career opportunities now that she must take care of the couple's son on her own. The AAO also recognizes that the applicant's mother in law, although only 45 years old, suffers from medical conditions that prevent her from providing sufficient child care support. The AAO further notes the applicant's spouse's reluctance to relocate to India. The AAO, however, finds that these are normal circumstances resulting from the separation of a couple and do not rise to the level of "extreme" either individually, or in the aggregate.

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, 8 U.S.C. § 1182(a)(9)(B)(v).

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. 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.