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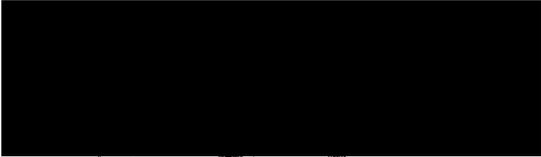


U.S. Citizenship
and Immigration
Services

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MAR 04 2004



FILE:



Office: NEW DELHI, INDIA

Date:

IN RE:



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

ON BEHALF OF PETITIONER:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India, and 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 sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for having procured admission into the United States by fraud or willful misrepresentation and for having been unlawfully present in the United States for more than one year. The applicant married a legal permanent resident of the United States on October 7, 1996. On September 22, 1998, the applicant's spouse became a naturalized citizen of the United States. On January 29, 1999, the applicant was removed from the United States. The applicant is the beneficiary of an approved Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and child.

The Officer in Charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. See Officer in Charge Decision, dated June 25, 2002.

On appeal, counsel asserts that the applicant's husband is suffering extreme hardship as a result of separation from the applicant. Counsel offers a letter from the applicant's husband, dated July 23, 2002 and a letter from his physician as evidence.

The record also contains an affidavit of [REDACTED] PhD, dated October 21, 2002; a letter from the applicant's husband, dated December 27, 2000; copies of the Indian birth certificate and U.S. passport issued to the applicant's husband; a copy of the U.S. birth certificate of the applicant's child; copies of financial and tax documents for the couple and copies of photographs of the applicant, her spouse and their child. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 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 with a fraudulent passport in 1991. In September 1994, the applicant was arrested by the Immigration and Naturalization Service [now Immigration and Customs Enforcement] and placed in deportation proceedings. The applicant was originally charged with entry without inspection and subsequently, entry fraud. Ultimately, the Board of Immigration Appeals (BIA) sustained the order of deportation issued by an immigration judge. On January 29, 1999, the applicant was removed from the United States.

The applicant accrued unlawful presence from April 1, 1997, the date of implementation of unlawful presence provisions under the Act, until January 29, 1999, the date on which the applicant departed from the United States triggering unlawful presence provisions. 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.

Section 212(i) and 212(a)(9)(B)(v) waivers of the bar to admission resulting from sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act respectively are 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 herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) and 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the BIA deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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 offers an assessment from a psychologist and statements from the applicant's husband to support the contention that the applicant's husband suffers extreme hardship as a result of separation from the applicant. The applicant's husband points to separation anxiety experienced by himself and his daughter, who is currently residing in India with her mother. The applicant's husband also states that he is experiencing financial hardship as a result of maintaining two households and that his wife and daughter are the subject of ridicule as a result of living with the applicant's parents in India. See Letter from [REDACTED] dated July 23, 2002. The psychologist evaluating the applicant's husband finds that the applicant and the couple's daughter are extremely important to him and their reunification would result in successful treatment and recovery from his current mental suffering. See Affidavit of [REDACTED] PhD, dated October 21, 2002. The AAO notes that the record does not demonstrate a continuing relationship between the evaluating psychologist and the applicant's husband. Further, the psychologist himself states that the applicant's husband previously visited a psychiatrist who "didn't detect anything except sadness" and another physician who prescribed him a mild tranquilizer for anxiety. *Id.* The assertions of the evaluating psychologist are rendered less compelling by the presence of conflicting professional opinions and the absence of continued treatment of the applicant's husband.

The applicant's husband, as a naturalized U.S. citizen, is not required to depart from the United States as a result of the denial of the applicant's waiver. However, the AAO notes that the hardship demonstrated in the record would be alleviated by a reunification of the applicant's family in India. Although the applicant's husband indicates that he may be unable to find employment in his chosen field in India, the record demonstrates that he has similar hardship seeking and maintaining employment in the United States. At the time of the psychologist's evaluation, the applicant's husband was removed from his previous position and was having difficulty obtaining new employment. *Id.* Further, the record does not establish that the applicant will be unable to financially provide for his family if he resides in India.

The psychologist evaluating the applicant's husband concludes, "His move to India would not help." *Id.* However, the rest of the psychologist's report and the remainder of the record do not provide support for the assertion. On the contrary, the record establishes that the hardship that the applicant's husband experiences is the direct result of separation from his family and relocation to India would result in their reunification. The record does not reveal any medical conditions from which the applicant's husband suffers that could not be adequately treated in India and the record does not establish the need for the presence of the applicant's husband in the United States.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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.