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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H4

[REDACTED]

FILE:

[REDACTED]

Office: NEW DELHI, INDIA

Date: NOV 02 2006

IN RE:

[REDACTED]

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:

[REDACTED]

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 cursive script, 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 spouse and has a U.S. citizen father and a lawful permanent resident mother. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and parents.

The Acting Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relatives. The application was denied accordingly. *Decision of the Acting Officer in Charge, dated March 29, 2005.*

On appeal, counsel asserts that the applicant has demonstrated that his qualifying relatives would suffer extreme hardship if the applicant were removed from the United States. *Form I-290B, dated August 6, 2004.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement by counsel; a letter from the applicant; letters from the applicant's father; a letter from the applicant's brother; letters from the applicant's spouse; a consular memorandum, dated April 23, 2004; consular notes, dated April 24, 2004; a letter of support from a friend; a sworn declaration from the applicant; an employment letter for the applicant's spouse; tax statements for the applicant's spouse; and a declaration from a deportation officer, dated December 31, 2001; a post order custody review worksheet, dated September 6, 2001; and decisions of the Immigration Judge, dated January 6, 1997 and October 16, 2001. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present application, the record indicates that the applicant entered the United States without inspection on May 18, 1995 at or near Brownsville, Texas. *Post Order Custody Review Worksheet, dated September 6, 2001*. He filed an application for asylum on June 6, 1996 and had an interview before the San Francisco Asylum Office on July 15, 1996. *Id.*; *See Also Form I-589 and interview notice*. His case was referred to an immigration judge, and on January 6, 1997 the applicant was ordered removed in absentia as he failed to appear for his court hearing. *Decision of the Immigration Judge, dated January 6, 1997*. On June 13, 2001, the former Immigration and Naturalization Service (INS) detained the applicant at an INS Service Processing Center in Florence, Arizona. *Post Order Custody Review Worksheet, dated September 6, 2001*. The applicant filed a motion to reopen with the Executive Office for Immigration Review (EOIR) which was subsequently denied on October 16, 2001. *Decision of the Immigration Judge, dated October 16, 2001*. On June 7, 2002 the applicant married a U.S. citizen. *See marriage certificate*. On January 11, 2002, the Service issued a Warrant of Removal/Deportation to the applicant, (*Form I-205*) and on January 14, 2002 the applicant left the United States. *Consular notes, dated April 24, 2004*. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until January 14, 2002, the date he departed the United States. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his January 14, 2002 departure from the United States. 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse, father, or mother if the applicant is removed. If 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals 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 family ties to 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.

The AAO notes that extreme hardship to a qualifying relative of the applicant must be established in the event that she resides in India or the United States, as he or 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.

If the applicant's spouse travels with the applicant to India, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Form G-325A for the applicant*. Her entire immediate family lives in the United States, and she has no family, cultural, or religious ties to India. *Attorney's statement*. The applicant's spouse does not speak Punjabi. *Letter from the applicant's spouse, dated July 29, 2004*. The applicant's spouse has two daughters who do not reside with her. *Id.* She would never consider permanently leaving the city, let alone the country because of her daughters. *Id.* Additionally, due to language barriers and the lack of opportunities, the applicant's spouse does not believe she could find employment in India. *Id.; Attorney's statement*. While the AAO acknowledges the applicant's spouse's statements, the AAO does not find that the record demonstrates that the applicant would be unable to contribute to the family's finances. Further, adapting to a new culture is a normal part of what families deal with when a family member is removed. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in India.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse stated that it has been difficult to be separated from the applicant because he is her friend, companion, and most of all, her emotional support. *Letter from the applicant's spouse, dated July 29, 2004*. The applicant's spouse feels depressed and has noticed herself being short-tempered with her daughters. *Id.* Due to her preoccupations with her spouse and her daughters, the applicant's spouse decided to work fewer hours. *Id.* As a result of working less, she is now dependent upon government assistance. *Id.* Phone calls to India are expensive, and the applicant is able to speak with her spouse at most once or twice a week. *Id.* While the AAO acknowledges these difficulties, 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the United States.

If the applicant's father travels with the applicant to India, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father's native country is India. *Form G-325A for the applicant.* The record does not address what family ties the applicant's father may still have in India. The applicant's father owns a successful Indian restaurant in Tucson. *Letter from the applicant's father.* There is nothing in the record to show that the applicant's father would be unable to contribute to his family's financial well-being from a location outside of the United States. According to the applicant's spouse, the applicant's father developed an infection in his jaw that stemmed from a toothache. *Letter from the applicant's spouse, dated July 29, 2004.* This caused him to be hospitalized in the Intensive Care Unit for approximately three months. *Id.* He could not open his mouth more than one inch, had to be fed through a tube, and did not have 100% control of his jaw muscles. *Id.* The applicant's father was taken off the feeding tube and returned to solid foods. *Id.* The AAO notes that there is no medical documentation in the record regarding the applicant's father's health condition or whether he could be treated in India. Although the AAO recognizes the difficulties in relocating to another country, when looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his father if he were to reside in India.

If the applicant's father resides in the United States, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father does not speak English and needs the applicant to interpret in Punjabi for him, particularly during his doctor's appointments. *Letter from the applicant's spouse, dated July 29, 2004.* The applicant's spouse indicated that she helped the applicant's brother interpret for the father's medical visits and that it was problematic. *Id.* They did not establish, however, that there were no family or friends who could interpret in a more efficient manner. The applicant's father is concerned that his Indian restaurant will not successfully function without the applicant. *Letter from the applicant's father.* No evidence was submitted to show that the restaurant has experienced problems without the applicant. The record does not address what additional hardships the applicant's father may suffer if he remains in the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his father if he were to reside in the United States.

If the applicant's mother travels with the applicant to India, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother's native country is India. *Form G-325A for the applicant.* The record does not address what hardships the applicant's mother may suffer if she travels with the applicant to India. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his mother if she were to reside in India.

If the applicant's mother resides in the United States, the applicant needs to establish that his mother will suffer extreme hardship. The record does not address what hardships the applicant's mother may suffer if she remains in the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his mother if she were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relatives 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 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.