



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

HD

FEB 09 2007

FILE:

Office: NEW DELHI, INDIA

Date:

IN RE:

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:

SELF-REPRESENTED

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 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 her last departure from the United States. The applicant is engaged to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her prospective spouse.

The Acting Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative, her prospective spouse. The application was denied accordingly. *Decision of the Acting Officer in Charge*, dated June 27, 2005.

On appeal, the applicant's prospective spouse asserts that that the applicant is not inadmissible, as she was a minor when she overstayed her visa. The record also includes documentation to demonstrate that the applicant's grandmother may die before the applicant is again inadmissible to the United States. *Form I-290B and attached documentation*.

In support of these assertions the record includes, but is not limited to, statements by the applicant's prospective spouse; a letter from the Consular Section, Mumbai, India, dated December 3, 2004; medical records for the applicant's grandmother; a copy of the passport of the applicant's prospective spouse; and copies of his airline ticket and receipts. 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 was admitted to the United States on April 22, 1997 with a B-1/B-2 visa. *Consular memorandum, dated October 29, 2004.* After entering the United States, the applicant applied for a change of status to an F-1 visa which was subsequently denied in June 1997. *Id.* The applicant's B-1/B-2 visa expired on October 21, 1997. *Id.* The applicant remained in the United States and attended two years of high school in New Jersey. *Id.* She voluntarily departed the United States on July 24, 2000. *Id.*

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of her inadmissibility. The applicant's prospective spouse asserts that the applicant is not inadmissible since she was a minor when she overstayed her visa. *Form I-290B.* The AAO notes that minors do not accrue unlawful presence for the purposes of section 212(a)(9)(B).

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

(B) Aliens unlawfully present.-

(iii) Exceptions.-

(I) Minors.- No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

The applicant turned 18 years old on June 22, 1999. *Form G-325A.* The applicant therefore accrued unlawful presence from June 22, 1999 until she departed the United States on July 24, 2000. 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. While the AAO concurs that the applicant accrued unlawful presence for more than a year, it notes that the Acting Officer in Charge erred in finding that the applicant had accrued unlawful presence from October 21, 1997, the date her B-1/B-2 visa expired, until July 24, 2000, the date she departed the United States. As previously noted, the applicant did not accrue unlawful presence during the time she was under 18 years of age.

If an applicant seeking a K nonimmigrant visa is inadmissible, the applicant's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

(a) *General—(1) Filing procedure—(i) Immigrant visa or K nonimmigrant visa applicant.*

An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

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.¹ The plain language of the statute indicates that hardship that the applicant's grandmother or that the applicant herself would experience if not admitted to the United States 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 that would be suffered by the applicant's prospective spouse 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, the applicant's prospective spouse, must be established in the event that he resides in India or the United States, as he 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 prospective spouse joins the applicant in India, the applicant needs to establish that he would suffer extreme hardship. The applicant's prospective spouse was born in the United States in 1981. *Form G-325A for the applicant's prospective spouse*. His parents were born in the United States and continue to live there. *Id.* Based on the record, it does not appear that the applicant's prospective spouse has any family ties to India. The applicant's prospective spouse does not speak the Hindi language and has a difficult time understanding English with heavier accents. *Letter from the applicant's prospective spouse, dated October 25, 2004*. The applicant's prospective spouse is not familiar with the surroundings of the city, nor does he know of any job opportunities that would be available to him in India. *Id.* The applicant's prospective spouse does not believe he would have any medical insurance, and would also have a problem with clean water, health concerns, and money. *Id.* The AAO notes there are no country condition reports documenting the applicant's prospective spouse's assertions. Additionally, the AAO does not find the record to demonstrate that the applicant would be unable to sustain and help support her prospective spouse in India. The record fails to document any type of health condition that applicant's prospective spouse may have. The applicant's prospective spouse is a young, healthy, educated individual. While the AAO acknowledges that residing in a foreign country presents challenges, the challenges listed by the applicant's spouse are what could normally be expected by an individual joining a spouse in a foreign country. When looking at the aforementioned

¹ In the case of a beneficiary who is a fiancé(e) who is inadmissible on a ground which could be waived under section 212(a)(9)(B)(v) of the Act, the "qualifying relationship" is to the "prospective spouse."

factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in India.

If the applicant's prospective spouse resides in the United States, the applicant needs to establish that he would suffer extreme hardship. The applicant's prospective spouse stated that it will be impossible to maintain a job in the United States while traveling to and from India. *Letter from the applicant's prospective spouse, dated October 25, 2004*. He asserted that travel costs associated with these flights will become increasingly expensive, as will the cost of maintaining communication by the telephone. *Id.* While the AAO acknowledges these financial difficulties, it again notes that the record fails to demonstrate that the applicant would be unable to sustain herself and assume some of this financial burden from India. The record includes medical documentation concerning the applicant's grandmother's health. The AAO notes that the applicant's grandmother is not a qualifying relative in this case. The applicant's prospective spouse stated that he suffers from stress, insomnia, and extreme pain from being separated from the woman he loves. *Letter from the applicant's prospective spouse, dated October 25, 2004*. The AAO notes that the record fails to include written documentation from a licensed health professional regarding these health conditions.

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, his situation, if he remains in the United States, is typical to individuals separated as a result of inadmissibility 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 her spouse if he were to reside in 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 an application for a waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.