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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

JUL 23 2007

IN RE: [Redacted]

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. section 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. 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. She 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 a period of more than one year. She 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 remain in the United States with her U.S. citizen father and lawful permanent resident mother.

The record reflects that the applicant's father filed a Petition for Alien Relative (I-130) on the applicant's behalf on October 16, 1997. The petition was approved on April 22, 1998. The applicant was first admitted into the United States in B-2 nonimmigrant status on February 1, 2000. The applicant remained in the United States after her period of authorized stay expired on August 30, 2000. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on June 16, 2003. The applicant departed from the United States and returned on December 29, 2003 pursuant to advance parole. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 29, 2006.

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on qualifying relatives, her U.S. citizen father and lawful permanent resident mother, and denied the waiver application accordingly. *Decision of Director* [REDACTED] dated November 20, 2006.

On appeal, counsel maintains that the bar to admission for the applicant would impose extreme hardship on her parents as follows:

1. The applicant's mother suffers from heart disease and her father is also in poor health and they need the applicant's constant care. They would be unable to obtain adequate medical care in India.
2. The applicant's parents would suffer emotional/psychological harm from being separated from their only daughter.
3. The applicant's parents would be deprived of the economic help the applicant provides them "by working at different jobs." The applicant's parents would be unable to find employment in India because of their age and medical conditions.
4. Both the applicant's parents have "almost all of their family and relative living in the United States," and they would be deprived of association with family if they moved to India.
5. The applicant's father would suffer hardship attempting to socially readjust to life in India.

The record contains an affidavit from the applicant's parents; a copy of the naturalization certificate of the applicant's father; a psychological evaluation from [REDACTED]; copies of employment and tax records of the applicant's parents, copies of a credential evaluation report and other employment documents for the applicant. The entire record was reviewed and considered in rendering this decision.

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

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

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or

(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 [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 applicant was first admitted into the United States in B-2 nonimmigrant status on February 1, 2000 and was granted authorization to stay through August 30, 2000. The applicant remained in the United States after her period of authorized stay expired on August 30, 2000. The applicant filed her adjustment application on June 16, 2003. The applicant later departed from the United States pursuant to advance parole and returned on December 29, 2003. Therefore, the applicant was unlawfully present in the United States from August 31, 2000 to June 16, 2003, a period in excess of one year.

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 is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen father and lawful permanent resident mother are the only qualifying relatives. 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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“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 therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is 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.

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 parents face extreme hardship if she is refused admission. The director determined that “the various hardships that would be faced by the qualifying parents if they were forced to leave the country do not meet the standard of extreme hardship because the claim to hardship would only affect the qualifying parents if they chose to depart the United States.” *Decision of Director I [REDACTED]* dated November 20, 2006. The director also found the evidence that the applicant’s father would be unable to adjust to life in India insufficient. The director noted that the applicant had failed to prove that her departure would cause extreme hardship to her parents because “it has not been established that the applicant’s parents could not find another . . . relative that could assume the applicant’s caregiver role” and no evidence that the “applicant’s parent are financially dependent upon the applicant” had been submitted. *Id.*

On appeal, counsel asserts that the director was unjustified in assuming that other relatives can render the same quality of care to the applicant's parents as their only daughter.

The AAO recognizes that the applicant's parents will suffer emotionally as a result of separation from the applicant if they choose not to return with her to India. However, their situation is not atypical of individuals separated as a result of removal or inadmissibility and 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 has asserted that she is an essential caregiver for her parents, but the evidence does not establish that the applicant's parents will be unable to support themselves financially or obtain adequate medical care in their daughter's absence. The evidence shows that the applicant's father is employed and her parents have health insurance. The applicant's parents have resided and been employed in the United States since 1997. In their affidavit, the applicant's parents state that the applicant is "virtually the only female around her ailing and sick mother to take care of her." They note that the applicant has been "trying to help her parents economically" but has started working only part-time in order to be at home to care for her ailing mother. However, in asserting that they would suffer extreme hardship if they returned to India, the applicant's parents state that "their whole family including their brothers, sisters and their parents (father is passed away now) has been living in United States for a period stretching over decades" and if the applicant is not admitted they "will be forced to move to India where they have a very few family members." They also state that they are "fully integrated into American" life. Counsel has asserted that the director was unjustified in assuming that other relatives could provide care to the applicant's parents, particularly her mother, but the applicant has not met her burden of showing that in her absence, her parents would be unable to afford or receive the medical care they require (including any in-home care now provided by the applicant) or function in a society in which, the evidence shows, they have numerous family ties and, by their own admission, are successfully integrated.

Although the applicant's assertions, as well as those made by medical professionals, are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence that only the applicant can provide the care her parents require. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Likewise, the applicant has failed to submit evidence beyond her assertions and the assertions of her parents showing that the applicant's parents would be unable to find adequate employment and medical care in India. They have asserted that the applicant's father would be unable to find employment in India because of his age, but the record shows that the applicant's father was educated in India and contains no specific information indicating that individuals similarly situated to the applicant's father are unable to find suitable

employment in India. The record also lacks adequate evidence showing that the medical care the applicant's mother requires is not available in India or that members of her family there could not provide assistance. As stated above, 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)). Although the assertions of applicant and her parents are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 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.