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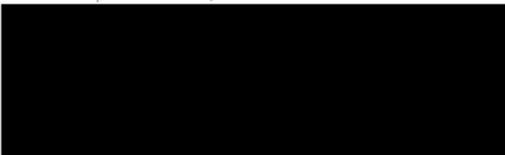


FILE: [REDACTED] Office: SAN FRANCISCO, CA Date: JAN 30 2008

IN RE: Applicant: [REDACTED]

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 District Director, San Francisco, California, 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 35-year-old native and citizen of India who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i) for having been unlawfully present. The record reflects that the applicant's spouse, [REDACTED] is a 38-year-old citizen of the United States. The couple was married on December 14, 2001 in Santa Rosa, California. The applicant seeks a waiver of inadmissibility in order to remain in the United States and adjust his status to lawful permanent resident.

The district director found the applicant to be inadmissible and denied the waiver. The director determined that the applicant had failed to establish extreme hardship to his spouse and denied the application accordingly.

On appeal, the applicant, through counsel, states that his spouse would face persecution on account of her religion if she relocated to India. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant further claims that his spouse would face persecution at the hands of his family and Indian society because of her different culture and language. *Id.* The applicant also claims that his spouse would experience financial hardships, interruption of her career, and psychological hardship. *Id.* The applicant does not submit any brief or additional evidence on appeal.

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.

(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 180 days. The district director's finding of inadmissibility is therefore affirmed. The question remains whether he 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 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).

The AAO notes that the only evidence of hardship submitted by the applicant is a letter submitted to the district director in conjunction with the filing of the Form I-601, Application for a Waiver of Ground of Excludability. The letter, signed by the applicant and his wife, states that the applicant's wife would face extreme hardship if she were to relocate to India because (1) she suffers from seasonal allergies and would be exposed to pollution daily without adequate medical treatment; (2) she would have limited educational opportunities; (3) she would have to learn Hindi; (4) she would not be safe; and (5) she and the applicant would suffer a financial loss if they divested themselves of their partnership in a recently purchased liquor store. There is no indication in the record of what family or community ties the applicant's spouse has in the United States. There is also no indication of what, if any, hardship the applicant's spouse would face should she decide not to relocate to India. The AAO notes that as a U.S. citizen, the applicant's wife is not required by statute to relocate to India and doing so would be a matter of choice on her part.

Absent any evidence to the contrary, the AAO must find that the applicant's spouse would face no greater hardship if the waiver application is denied than the unfortunate, but expected disruptions, inconveniences, and difficulties faced by any other individual in similar 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”).

In proceedings for application for waiver of grounds of inadmissibility, 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.