U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: JUN 25 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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, 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 record reflects that the applicant is a native and citizen of Sri Lanka. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure an immigrant visa for the United States by fraud and willful misrepresentation of a material fact in 1992. The applicant is a derivative of an employment based application filed on behalf of his spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to travel to the United States and reside with his Lawful Permanent Resident (LPR) spouse and children.

The Officer in Charge concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Officer in Charge Decision* dated June 18, 2003.

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

> (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 that:

> (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.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects on May 13 1992, the applicant knowingly and willfully misrepresented material facts by presenting an employment letter that was false in order to procure an immigrant visa. The applicant alleges that the consular officer at the time made false accusations but there is no documentary evidence that the allegations were rebutted. The labor certificate and the employment application were returned to the Immigration and Naturalization Service (now known as Citizenship and Immigration Service (CIS)) for revocation.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In the present case, the applicant must demonstrate extreme hardship to his LPR spouse or mother.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deemed 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.

On appeal the applicant submits a letter from his spous imself and affidavits from family members. The affidavits state general hardship that would be imposed o her spouse were not allowed to enter the United States. In his letter the applicant states that and his children are undergoing severe mental stress and strain due to the separation. The applicant states that his children are unable to concentrate on their studies and his spouse is trying to keep them out of a state of depression. tates that she immigrated to the United States with her children in order for them to be able to take advantage of better educational opportunities. She further states that one of her children must work in order to assist her with her financial needs and that both of her children suffer from the separation from the applicant.

As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. The applicant's assertions regarding the hardship his children would suffer will thus not be considered.

In the present case the record reflects that the applicant's spouse is a native of Sri Lanka and that she met and married her husband in Sri Lanka. She is bilingual and no reason was provided, other than educational opportunities in the United States for her children as to why she would not be able to adjust to life in Sri Lanka and obtain gainful employment if she decides to return to Sri Lanka.

The applicant's brother states that their mother had a heart attack in 2003 and is distressed about the applicant's family being separated and worried about the devastating effects the separation would have on the family. No evidence was provided to show that the applicant's mother has not recuperated from her heart attack or that she cannot take care of herself and her daily chores or that there is no one else to help her.

Additionally, on appeal the applicant submits a letter from his doctor in which he states: "Finally I diagnose that he is suffering from acute depression, as he is living all alone and since is missing his wife and children. . .. . Therefore I strongly recommend him to be with the family to overcome this serious problem."

"Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(i) waiver of inadmissibility. *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

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 (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 U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his LPR spouse or mother would suffer extreme hardship if he were not allowed to travel to United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.