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**U.S. Department of Homeland Security**
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

**U.S. Citizenship and Immigration Services**

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: OCT 29 2004

IN RE: [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:

[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, Director
Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the 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 by a consular officer 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband and stepson.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge,* dated June 4, 2003.

On appeal, counsel asserts that the applicant clearly demonstrates the required extreme hardship to her United States citizen husband and that the alleged misrepresentation was not material to the approval of the applicant's Form I-129 petition. *Form I-290B*, dated June 30, 2003.

In support of these assertions, counsel submits psychiatric evaluations for the applicant's spouse and child; a copy of an article addressing single parent homes; school reports relating to the academic progress and psychological stability of the applicant's stepson; medical records relating to the applicant's spouse and child; letters and affidavits of support; a copy of the naturalization certificate of the applicant's spouse and photographs of the applicant and her spouse.

The record reflects that the applicant willfully misrepresented material facts in seeking to obtain an H-1 visa to enter the United States. On or about June 29, 1999, a consular officer determined that the applicant did not possess the requisite training for the employment that her Form I-129 petition indicated that she would undertake in the United States and the applicant subsequently signed a statement under oath admitting that she misrepresented her skills and abilities.

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

> (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:

> (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.

Counsel contends that the applicant did not misrepresent a material fact in applying for an H-1 visa to enter the United States. Counsel asserts that the applicant was confused by the interview with a consular officer at the American Embassy because it was conducted in English and the consular officer was a male who behaved aggressively and intimidated the applicant. *I-601 Waiver Petition by US Citizen Spouse*, dated July 2, 2001. Counsel claims that the applicant signed a statement under oath admitting to misrepresentation out of fear that she otherwise would not see her family again. *Id.* at 2-3. The record fails to substantiate the assertions of counsel regarding the manner in which the consular interview was conducted. Further, the AAO notes that the statements of counsel do not refute the fact that the applicant misrepresented her experience in attempting to procure an employment-based visa; counsel's arguments merely seek to establish that the applicant acted under duress and are unpersuasive in so far as they are unsubstantiated.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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).

*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 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.

Counsel asserts that the applicant's spouse is unable to relocate to India in order to reside with the applicant because his career has been established in the United States and relocation would impose hardship on his son who has continuously resided in the United States and received his education to date in this country. *I-601 Waiver Petition by US Citizen Spouse* at 3.

Further, counsel contends that the applicant's spouse experiences extreme hardship as a result of residing in the United States in the absence of the applicant. Counsel indicates that the applicant's spouse is a single parent who requires the presence of the applicant in order to raise his son. Counsel states that the applicant's son suffers emotionally and psychologically as a result of separation from his stepmother and submits psychiatric and school reports to substantiate these claims. *See Psychiatric Report from* [redacted] dated June 20, 2003. *See also Educational Evaluation*, dated March 24, 2003. The AAO notes that the applicant and her spouse have never resided together as a married couple. Further, the applicant's stepson has been raised solely by his father since he was one year old. *Social Assessment, Lyncrest School*, dated March 5, 2003. The record reflects, however, that the parents of the applicant's spouse reside with the applicant's spouse and stepson in the United States and assist in caring for their grandson. *Id.* The record reflects that the mother of the applicant's spouse has a close relationship with her grandson and serves as a female

presence in his life. *Id.* (stating "feels that his grandmother takes very good care of him"). Although counsel offers several affidavits testifying that the applicant's stepson and the applicant are close as evidenced by their interaction during video-phonic conversations, the record fails to establish that the presence of the applicant, who has never resided with her stepson, is required for the child's successful development. *See Affidavit* dated May 25, 2001 (representative example among many affidavits). Further, the AAO notes that the applicant's stepson is not a qualifying relative for purposes of waiver proceedings conducted pursuant to section 212(i) of the Act.

The record establishes that the applicant's spouse suffered with an ulcer in 1998 and 1999. *Affidavit of Satish Pandya*, dated June 15, 2001. As this condition predates the determination of inadmissibility for the applicant, the record fails to demonstrate that a waiver of the applicant's inadmissibility will resolve the medical condition of the applicant's spouse and the record fails to demonstrate that the presence of the applicant is required for the successful treatment of the condition suffered by her husband.

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. Moreover, the AAO notes that the U.S. Supreme Court 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. The AAO recognizes that the applicant's spouse endures hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parent 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 she 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. *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.