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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date:

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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 and 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for submitting a fraudulent passport in connection with her entry into the United States on June 17, 1995, at JFK airport in New York. The applicant subsequently applied for asylum, which was denied by the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)]. She was referred to the immigration court. During the pendency of those proceedings, she married her U.S. citizen spouse who filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. That petition was approved on May 11, 1999, and the applicant subsequently applied for and received voluntary departure. Counsel submitted an Application for a Waiver of Grounds of Excludability (Form I-601) on the applicant's behalf pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to permit the applicant to return to the United States with her children in order to join her U.S. citizen spouse.[1]

The officer in charge issued a decision denying the waiver application on July 30, 2002, on the basis that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, in this case the applicant's U.S. citizen spouse. *Decision of the Officer in Charge,* dated July 30, 2002. Counsel submitted an appeal on August 23, 2002, providing a brief statement and indicating that a brief would be submitted within thirty days.[2] No appeal brief was received.

On appeal, counsel states that CIS abused its discretion in denying the waiver which counsel asserts should have been granted on humanitarian grounds. *Counsel's Statement in Support of* Appeal, dated August 23, 2002. Counsel also asserts that the marriage was bona fide and the separation of nearly four years at the time of the appeal had resulted in hardship, including the economic hardship of maintaining separate residences, the hardship of separation, the medical hardship faced by the applicant's child who suffers from asthma and lacks adequate medical facilities to treat her condition. *Id.*

The record contains some documents and exhibits in support of the application. The principal documents submitted include a statement from the applicant offered as an attachment to the Form I-601; medical records from 1999 and 20002 relating to the medical treatment of the applicant's child in India, including statements b[redacted] diagnosing the applicant's daughter with allergic bronchitis and recommending that she be returned to the United States; various documents relating to the applicant's marriage and associated petitions. The entire record was reviewed and considered in rendering a decision on the appeal.

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[1] Although the record contains numerous references to the hardship that will be suffered by the applicant's U.S. citizen child as a result of her asthma, and because of the separation from her step-father and friends, the AAO notes that hardship suffered by the children of the applicant is irrelevant to waiver proceedings under section 212(i) of the Act. Hardship experienced by the applicant's children is therefore only considered to the extent that it impacts the hardship suffered by the applicant's spouse, the qualifying relative in the application.

[2] We note that the Notice of Appeal (Form I-290B) and letterhead reflects an address different from that contained in the Notice of Entry of Appearance as Attorney or Representative (Form G-28) contained in the record and bearing a date of February 9, 1998. We recommend that counsel submit a new Form G-28 in order to ensure that any future correspondence regarding this case reaches counsel at his current office address.

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.
>
> (ii) Falsely claiming citizenship. –
>
> (I) In General –
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> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.
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> . . . .
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> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

The record reflects that on June 17, 1995, the applicant entered the United States through the use of a fraudulent passport. She filed an application for asylum with CIS. That application was denied and the applicant was placed in removal proceedings before the immigration judge. She married her U.S. citizen spouse who then filed an I-130 on her behalf. Following the approval of the petition, the applicant sought voluntary departure and returned to India and subsequently filed the Form I-601 waiver application which was denied by the officer in charge. Counsel contends that CIS erred in concluding that the applicant failed to demonstrate that the applicant's removal would result in extreme hardship to his U.S. citizen spouse.

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 himself 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) 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 offers a statement containing arguments in support of the appeal, the applicant's statement and medical records relating to the applicant's daughter. Little else has been submitted. Even though claims of financial hardship are alleged, the evidence simply states that maintaining two households has resulted in extreme hardship. However, no evidence in support of this assertion has been provided other than the statement of the applicant. The U.S. citizen spouse, who is the qualifying relative for purposes of the waiver application, has not submitted any statement in support of the application detailing the hardship, if any, that he has encountered, or would encounter, nor has the applicant offered any documentary evidence detailing the economic hardship which he faces. Although the couple has been separated for a considerable period of time, no evidence has been offered demonstrating any hardship, emotional, or otherwise that has befallen the U.S. citizen spouse. Although some documents have been offered relating to the medical condition of the applicant's child, we have noted that the child's hardship is only relevant to the extent it impacts upon the hardship to a qualifying relative, and the record is devoid of evidence on that issue.[3]

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, the extent of his hardship is completely unknown to the AAO due to the absence of evidence on this issue. Based upon the applicant's representations, it appears that the family unit is experiencing the normal results of deportation, and that the resulting hardship does not rise to the level of extreme hardship.

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[3] Even were we to consider the child's medical condition in regard to its impact upon the applicant's hardship, we note that the medical evidence submitted is not substantial. It consists of four pages relating to two medical consultations related to allergic bronchitis for which the doctor recommended a return to the United States, and one apparently mild reaction to a tuberculin test. No additional medical evidence was submitted.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he 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.