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

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MAR 02 2005

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FILE:

[Redacted]

Office: BALTIMORE, MD

Date:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Baltimore, Maryland. 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 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

The interim district director 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 Interim District Director*, dated December 5, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) failed to consider the applicant's length of residence; extreme hardship suffered by the applicant's spouse and children; profitable family business owned and operated by the applicant and two residential properties owned by the applicant and his spouse. Counsel further contends that CIS erred in failing to consider that the applicant has not been arrested in the United States or anywhere else in the world. *Form I-290B*, dated December 22, 2003.

In support of these assertions, counsel submits a brief, dated February 5, 2004; a letter from the applicant, dated January 30, 2004; a copy of the naturalization certificate issued to the applicant's spouse; a copy of the marriage certificate for the applicant and his spouse; copies of the United States birth certificates of the applicant's two children; letters of support; a copy of a country condition report for India and copies of the mortgage notes for two properties owned by the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that in June 1987, the applicant applied for admission into the United States by presenting a passport belonging to another person.

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.

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 (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 contends that the applicant's spouse would suffer hardship as a result of relocation to India in order to remain with the applicant. Counsel asserts that there are few job opportunities in India and that the applicant's spouse does not possess the marketable skills necessary to obtain employment there. *Statement in Support of Appeal of the Denial of Form I-601 Application for Waiver of Grounds of Inadmissibility*, dated February 5, 2004. Further, counsel offers a country condition report as evidence of the unstable, dangerous conditions that exist in India. *Id.* at 3. Counsel states that the applicant's children would be deprived of the educational opportunities and quality medical treatment that they enjoy in the United States if they moved to India. *Id.* The AAO notes that the children of the applicant are not qualifying family members for purposes of proceedings under section 212(i) of the Act, however hardship imposed on the children of the applicant and his spouse is considered insofar as it imposes hardship on the qualifying relative in the application, namely the applicant's spouse.

Counsel fails to establish that the applicant's spouse will suffer extreme hardship if she remains in the United States maintaining access to adequate medical care and educational opportunity for their children and residence in a stable, nonviolent environment. Counsel asserts that the inadmissibility of the applicant will cause extreme financial hardship to the applicant's spouse and children if they remain in the United States in the absence of the applicant. *Letter from Brij Mohan Vinaik*, dated January 30, 2004. Counsel submits a letter from the applicant indicating that the applicant operates a business in which his wife works, but the applicant contends that she will be unable to maintain the business in his absence. *Id.* The record fails to establish that the applicant's spouse will be unable to provide financially for herself and the couple's children in the absence of the applicant. Counsel indicates that the applicant's presence is required in order for his spouse to afford their two mortgages. *Statement in Support of Appeal of the Denial of Form I-601 Application for Waiver of Grounds of Inadmissibility*. The record fails to demonstrate that ownership of two properties is required in order to house the applicant's family. The AAO finds that the record fails to

establish that the living arrangements of the applicant's spouse cannot be altered in order to accommodate a change in income. Further, the record fails to demonstrate that the applicant will be unable to provide financial support to his family from a location outside of the United States. Moreover, 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.

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 would endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, 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 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.