U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: ROME, ITALY Date: AUG 24 2009

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy, and 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 native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by presenting a photo-subbed Indian passport. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen wife and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 3, 2007.

On appeal, the applicant, through counsel, asserts that "USCIS erred in concluding that the hardship to the applicant's U.S. citizen wife did not amount to 'extreme hardship.'" *Form I-290B*, filed June 4, 2007.

The record includes, but is not limited to, letters from the applicant, his wife, and children; a letter from [redacted] regarding the applicant's wife's mental status; and letters of recommendations from the applicant's family, friends, and acquaintances. **The entire record was reviewed and** considered in arriving at a decision on the appeal.

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

> (i) In general.-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.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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 AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

The record reflects that on September 6, 1991, the applicant entered the United States by presenting a photo-subbed Indian passport. On February 28, 1992, the applicant filed a Request for Asylum in the United States (Form I-589). In 1996, the applicant departed the United States. In 1999, the applicant attempted to obtain a visa to return to the United States; however, he was found to be inadmissible for his previous misrepresentation. On February 14, 2000, the applicant filed a Form I-601. On June 25, 2002, the Officer in Charge (OIC), New Delhi, India, denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On July 11, 2002, the applicant, through counsel, filed an appeal of the OIC's decision to the AAO. On February 11, 2004, the AAO dismissed the applicant's appeal. On February 2, 2004, the applicant's naturalized United States citizen wife filed a Form I-130 on behalf of the applicant. On September 7, 2005, the applicant's Form I-130 was approved. On May 31, 2006, the applicant filed another Form I-601. On May 3, 2007, the District Director, Rome, Italy, denied the applicant's Form I-601, finding that the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 claims that the applicant's spouse is suffering extreme hardship by being separated from the applicant. *See Form I-290B, supra.* Counsel states the applicant's wife "has been raising their children single handedly. She has been financial provider, mother and father." *Id.* In a letter dated May 12, 2006, the applicant's wife states she came to the United States to provide her "children with a better education and greater opportunities to raise their standard of living." In a letter dated may 12, 2006, the applicant's children state they cannot relocate to India; however, "going forward without [the applicant], also seems unbearable. [They] continue to need the comfort, love and financial support that his presence represents." The AAO notes that the applicant's three children are now all adults, and as United States citizens they are not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, as noted above, the applicant's children are not qualifying relatives for a waiver under section 212(i) of the Act. The applicant's wife states she "had to make various adjustments in maintaining [her] family. [She] had to overcome emotional stress of being a single parent bringing up [their] three children." In a letter dated December 26, 2000, [redacted] diagnosed the applicant's wife with major depression and prescribed her medication. The AAO notes that other than the letter from which is from 2000, there are no professional evaluations for the AAO to review to determine how the applicant's wife's mental, emotional, and/or psychological health has been affected by the applicant's immigration status. The applicant's wife states she is employed full-time at K-Mart. The AAO notes that it has not been established that the applicant's wife has no transferable skills that would aid her in obtaining a job in India. Additionally, the AAO notes that the applicant's wife is a native of India who speaks the native language, she spent her formative years in India, and it has not been established that the applicant's wife has no family ties in India. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in India.

In addition, counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States, maintaining her employment. The applicant's wife states "it is impossible for [them] to go back to India and live there again." As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states she helps her children financially with attending college, and each year the cost of college increases. The applicant's wife claims "[h]aving [the applicant's] support will help [them] to secure [their] children's future." The AAO notes that beyond generalized assertions regarding country conditions in India, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan*, *supra,* the Ninth Circuit Court of Appeals 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 wife has endured 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 removal 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 wife 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(a)(6)(C)(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.