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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: AUG 26 2009

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.

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).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. 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 the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States through fraud or misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 212(i), in order to reside with his wife and family in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision,* dated May 2, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [redacted] indicating they were married on October 15, 2002; a copy of the couple's U.S. citizen child's birth certificate; affidavits from the applicant, his parents, and [redacted]; letters from the applicant's and [redacted]s employers; a doctor's letter and medical records for the applicant's father; tax and financial documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

Section 212(i) provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien.

The record shows, and the applicant admits, that he entered the United States in March 2001 using a fraudulent passport and tourist visa under the name of [redacted]. *Record of Sworn Statement of* [redacted], dated April 24, 2007. Therefore, the record shows that the

applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. 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-Moralez,* 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 deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, contends she would suffer extreme hardship if her husband's waiver application were denied. [redacted] states she stopped working after giving birth to the couple's baby in May 2006. According to [redacted], she and the baby are covered under the applicant's health insurance plan and if the applicant departs the United States, they would lose their health insurance. In addition, [redacted] claims her entire family lives in the United States and that they are all very close. She states that she has lived in the United States since 1999, has not lived in India "for many years," and "has no one back in India." Furthermore, [redacted] claims that if her husband had to depart the United States, she would be forced to work two jobs and find childcare for their daughter. *Affidavit of* [redacted], dated April 20, 2007.

The applicant's parents, who are naturalized U.S. citizens from India, state that they both work at the Relax Inn, a hotel the applicant owns with other partners. The applicant's parents claim that they fear they will lose their jobs if the applicant is forced to return to India and is no longer involved in the business. In addition, the applicant's father has diabetes and "could be forced to stop work at any minute." According to the applicant's parents, "[h]aving [the applicant] around as part of [the] family's support network helps tremendously." Furthermore, the applicant's parents state that they "have many benefits in this country . . . [and i]t would be an extreme hardship for [them] to give up those benefits if [they] had to move back to India to be close to [their] son." They claim they "have no family that [they] are close to back in India," and that their entire family lives in the United States. *Affidavits of* [redacted] *and* [redacted] dated April 20, 2007.

A letter from the applicant's father's physician states that was seen in my office for the first time on 2/5/07 for uncontrolled DM. Pt is diabetic & was put on Rx on 2/5/07." *Letter from* [redacted], dated May 22, 2007.

The applicant states that he has been the chief engineer at the La Quinta Inn in Waldorf, Maryland,

since August 2003. He states he is also "one of three partners in [redacted] in Bel Alton, Maryland." The applicant states that if he were forced to return to India, his wife would have to go back to work and his daughter would lose her father. *Affidavit of* [redacted], dated April 20, 2007.

Letters from the applicant's employer, [redacted], state that the applicant has worked for Sandip Inc., doing business as La Quinta Inn, in Waldorf, Maryland, since August 2003. The applicant's employer states that the applicant earns $25,880 per year and that "[i]n addition to his salary, [the applicant] and his wife and daughter are provided with living quarter[s] as part of his benefits at no cost." The applicant's employer further states, "[s]hould [the applicant] not continue in our company as [an] employee for whatever reason, he and his family will be forced to vacate their apartment immediately." *Letter from* [redacted] dated May 20, 2007; *Letter from* [redacted] dated September 20, 2006.

Upon a complete review of the record evidence, the AAO finds that it is not evident from the record that the applicant's spouse or parents would suffer extreme hardship as a result of the applicant's waiver being denied.

Beginning with the applicant's parents, the record does not show that the applicant's parents would suffer extreme hardship if they decide to stay in the United States without the applicant. According to the applicant's parents, they both work at the Relax Inn and fear they would lose their jobs if the applicant returned to India because he is one of the owners of the hotel. *Affidavits of* [redacted] *and* [redacted] *supra.* However, the record indicates not only that the applicant is an owner of the hotel, but also that the applicant's parents themselves have some ownership interest in the hotel. According to the loan agreement in the record, the applicant, his parents, [redacted] and three other individuals, are jointly and severally liable for $1,290,000.00 for the purchase of the property located at [redacted] Bel Alton, Maryland. *Guaranty of Payment and Agreement*, dated February 7, 2005. The record shows that the applicant, [redacted] and the applicant's parents all reside at this address. *Affidavits of* [redacted] *and* [redacted] *supra*; *Biographic Information for* [redacted] *(Form G-325A)*, dated September 20, 2006 (indicating he has lived at [redacted], MD, from February 2005 until the present); *Biographic Information for* [redacted] *(Form G-325A)*, dated September 20, 2006 (same). There is no evidence in the record suggesting the applicant's parents would lose their jobs should the applicant's waiver application be denied, particularly considering they themselves have an ownership interest in the hotel. In addition, the applicant's parents do not allege and there is no evidence in the record indicating the applicant helps financially support his parents. There are no financial documents for the applicant's parents in the record and no evidence addressing their income or expenses. In any event, even if the applicant's parents lose their jobs at the Relax Inn and experience some economic hardship as a result, the U.S. 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); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

Regarding the applicant's father's diabetes, the applicant's father himself does not address how diabetes affects his daily life, if at all, and he does not assert that he needs his son's assistance because of it. In addition, the letter from [redacted] does not discuss the prognosis, severity, or treatment of the applicant's father's diabetes. *Letter from* [redacted] *supra.* Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of the applicant's father's diabetes or the treatment and assistance needed.

Turning to the applicant's wife, the record does not show that she would suffer extreme hardship if she decides to stay in the United States without the applicant. claim that she would be forced to work two jobs and find childcare for her daughter does not rise to the level of extreme hardship. As [redacted] states, she "ha[s] always worked, until recently," when she gave birth to the couple's baby. Indeed, the record shows that for several years before having the baby, [redacted] worked several jobs, earning more in wages than the applicant. *2005 Wage and Tax Statements (Form W-2)* (reporting the applicant's wages as $20,724 and [redacted] wages at $24,007 from two different jobs); *2004 Wage and Tax Statements (Form W-2)* (reporting the applicant's wages as $20,190 and [redacted] wages at $27,612 from two different jobs); *2003 Wage and Tax Statements (Form W-2)* (reporting the applicant's wages as $15,694 from two different jobs and [redacted] wages at $24,210 from four different jobs). [redacted] does not claim, and there is no suggestion in the record, that she is unable to work for any reason. Although the AAO recognizes she would need to find childcare for her daughter, [redacted] does not address whether her parents, who reside in Waldorf, Maryland, or the applicant's parents, who reside at the same address as Ms. in Bel Alton, Maryland, would be able to assist her with caring for the couple's daughter. The record does not show that [redacted] situation is unique or atypical compared to other individuals separated as a result of deportation or exclusion. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

To the extent counsel contends that "[s]hould [the applicant] be forced to leave the country his family will be come [sic] homeless," *Letter from* [redacted], dated June 1, 2007, at 2, significantly, neither the applicant nor his wife make such a claim. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In any case, despite the applicant's employer's letter stating that the applicant's family would be forced to vacate their apartment immediately should the applicant's employment at La Quinta Inn end, *Letter from* [redacted] *supra*, the record shows that the applicant and his wife have not lived at La Quinta Inn since February 2005. *Biographic Information for* [redacted] *and* [redacted] *supra* (indicating the couple lived at [redacted] in Waldorf, Maryland, from August 2003 until February 2005).

Moreover, the record does not show that the applicant's parents or wife would suffer extreme hardship if they moved back to India, where they were born and lived until adulthood, to avoid the hardship of separation. Aside from mentioning that their entire families now live in the United States, and that they would lose the "benefits" of living in the United States, *Affidavits of* [redacted] *and* [redacted] *supra*, there is insufficient evidence that moving back to

India would cause extreme hardship. Rather, whether [redacted] and the applicant's parents choose to remain in the United States or return to India with the applicant, their situation is typical of individuals affected by deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

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