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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H3

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

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), New Delhi. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] is a native and citizen of India. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States with her U.S. citizen child to join her U.S. citizen husband, [redacted]

The OIC concluded that the applicant had failed to establish that if she were denied a waiver extreme hardship would be imposed on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated July 18, 2006.

On appeal, counsel for the applicant asserts that the Service erred in denying the waiver and that "[i]n the accompanying brief it will be shown that [redacted] I-601 waiver should be approved due to the extreme hardship that her US Citizen spouse will suffer due to her absence." *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, dated July 31, 2006. Counsel subsequently submitted a letter briefing the issues and claiming [redacted] has experienced extreme hardship in the past six months due to the absence of his wife and daughte[redacted] *Counsel's Letter on Appeal,* dated August 23, 2006.

Counsel asserts:

> When [redacted] India, the couple decided that it would be in the best interest of [their] baby [redacted] to go with her mother. . . . Due to [redacted] hectic work schedule and business trips, it would have been impossible for him to take care of and work full time. However, at the time the decision was made the couple believed that this separation would only be for a short time.
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> Now knowing that this separation could be permanent, [redacted] lives with anxiety. He is unable to sleep well and is constantly worried about his family's health and safety in India. [redacted] and Andrea currently live in Mumbai where a lot of religious turmoil has been occurring. There has been violence in close proximity to where they live . . . The part of town that [redacted] and [redacted] live in is predominantly Muslim and [redacted] is Hindu . . . Due to [redacted] religious background, she is target everyday [redacted] is also a target everyday because she looks American and she stands out. Fearing for the safety of your wife and child on a daily basis is above and beyond the normal hardship endured due to deportation. Living with this fear is an extreme hardship.

Id. Counsel also states that [redacted] also faces the extreme hardship of worrying about his daughter's health, as she was born prematurely and has had many health problems since birth. . . .[and] doctors in India do not provide her with the same special care that her doctor here in the U.S. provides her with." *Id.* Counsel adds that [redacted] African American and "would be a major target of violence because of his race" and he "would not be able to find a job that is comparable to his current employment." *Id.* Counsel concludes

that suffers the extreme hardship of living consumed with fear and worry about the safety and health of his family, affecting his ability to think or work or lead a normal life. *Id.* Also submitted on appeal is a sworn statement by [redacted] in which he notes that he is devastated by the separation from his wife and baby, that the thought o[redacted]growing up without knowing him is unthinkable, and that he doesn't think he can survive being away from them much longer. *Statement by* [redacted] August 18, 2006. He adds that six years ago he suffered a devastating separation from his first daughter when he separated from her mother, but that his visitation rights allow him to see her regularly, unlike the separation from[redacted] which is far worse; that no child or parent should be denied the opportunity of knowing each other and that by denying the child's mother, who is their daughter's main caretaker, the opportunity to live in the US, he is being denied the opportunity to see their daughter; and the uncertainty of not knowing when he will see either his wife or child again is heartbreaking. *Id.* A statement from[redacted] is also submitted on appeal in which she refers to recent riots in Mumbai that interfered with a planned visit by her husband and his other daughter and "bomb blasts" that would have endangered them if they had visited as they occurred near where they would have been living with her sisters. *Statement by* [redacted] August 22, 2006.

The record also includes a prior letter by counsel and statements by the applicant's husband, mother and brother which were submitted in support of her waiver application. *Application for Waiver of Ground of Inadmissibility (Form I-601), attachments,* submitted May 2, 2006. [redacted] states he is the primary breadwinner for the family and that [redacted] is the primary caretaker for the home and children; the applicant's mother states that she is diabetic and depends on her daughter's care every day; her brother states that he also depends on his sister to take of their mother and his business and that he has back problems due to kidney stones. *Id.* There is no other evidence in the record that is relevant to a hardship determination. The record also includes a sworn affidavit by the applicant, given to the U.S. consulate in Mumbai, stating that she entered the United States previously with the intention of marrying her fiancé, but that her relationship with him did not go well; she married another man, and that marriage also did not go well; and that she finally met and married [redacted] nd has been blessed with a great family. *Statement by* [redacted] May 2, 2006.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant entered the United States in December 1998 on a fiancé visa, did not comply with the terms of the visa, and remained without permission until she left the United States on February 2, 2006. She thus remained unlawfully in the country for over one year. As she is seeking admission within 10 years of her last departure, the OIC correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or to her children is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. [redacted] U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO also notes that even if the evidence showed that the applicant's mother (who states that she has an application for permanent residence pending) or brother would suffer hardship if the applicant were not admitted to the United States, they are not qualifying relatives and hardship to them does not establish hardship to the applicant's qualifying relative, Mr. [redacted]

The record reflects that [redacted] was born in 1966 in India. She entered the United States in 1998 for the purpose of marrying her fiancé, but did not marry him. She married [redacted] a U.S. citizen, in 2003, and their child, [redacted] was born in July 2004. [redacted] was born in 1955, and has a child from a previous marriage who was born in 1993. [redacted] returned to India, taking the couple's daughter with them, after her application for adjustment of status was denied; she applied for an immigrant visa and waiver of inadmissibility in Mumbai. *See Memorandum from U.S. Consulate General in Mumbai,* 4 May 2006. She states that she resides in Mumbai either with one of two sisters or an aunt. *Id.; Statement by* [redacted] August 22, 2006. [redacted] asserts that if she is not granted a waiver of inadmissibility, her husband will suffer extreme hardship, including the hardship of separation from her and their baby or the dangers and financial difficulties of living in Mumbai; [redacted] adds that he cannot live without his wife and baby in the United States because of the anxiety this causes him and that he cannot move to India, where he has no ties other than his wife and child, because he will not be able to earn a living and he would be forced to separate from his other daughter. *See Statements, supra.*

As indicated above, other than statements by counsel, the applicant and her husband, mother and brother, there is no other evidence in the record that is relevant to a hardship determination, and no supporting evidence from relevant authorities that would give any additional weight to the declarations in the record. There is no evidence in the record regarding the financial situation or income of the couple, as the record does not contain income tax forms, employer letters or pay stubs, or documents indicating that [redacted] sends money to his wife overseas. Absent from the record are medical and doctor's reports that would be evidence of any health problems suffered by the couple's child, or the need for specialized treatment, as claimed by [redacted] and no medical evidence that [redacted] suffers from or has been treated for anxiety as a result of separation from his wife and child, or indications from an employer that his work is suffering. Although he states that he cannot go to India because that would mean separation from his older daughter, there is no evidence of their relationship or continued interactions. The record is also completely silent as to conditions in India, specifically in Mumbai, which would support claims of danger or ethnic or religious-based violence that would support a conclusion that [redacted] would have to endure the hardship of such violence or attitudes. No information has been submitted on conditions there that would support their claims that their daughter could not receive proper medical care or that it would be difficult for the couple to financially support themselves.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. Counsel's statements, as noted above, are not 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). Although the statements of [redacted] are relevant and are taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record as it exists does not support a finding that [redacted] would suffer extreme hardship if Ms. [redacted] were not granted a waiver of inadmissibility. It is clear from the couple's statements that they are suffering due to their separation, and the AAO recognizes that the emotional and psychological hardship of separation, especially given the tender age of their child, would be difficult for [redacted] if he chose to remain in the United States separated from his wife and possibly his daughter. Separation from a spouse is a significant factor to be considered for purposes of an extreme hardship determination and it is not discounted; the additional hardship of separation from a child or seeing a child separated from her primary caretaker, is also not discounted. The AAO recognizes the difficulty of making a decision to separate an infant from either parent, but notes that this is the same decision faced by others who are separated by removal or inadmissibility. In this case, they must decide whether to raise their young daughter in India, the United States, or in both homes. There is no evidence in the record that indicates that [redacted] would suffer extreme hardship if he chose to remain in the United States, continuing to work and maintaining his relationship with his older daughter. Although the couple states that work and financial constraints make travel back and forth difficult, the record contains no evidence of [redacted] employment or financial status. Whether he could afford child care for their daughter if he chose to remain in the United States and care for his daughter on his own is also a question that is not answered by the evidence in the record.

[redacted] decided to join his wife to avoid the hardship of separation, there is no evidence that he or his wife would not be able to adjust to life in India or not be able to earn a living wage. There is no indication that their child's health would suffer or that their financial situation would suffer, other than unsupported statements in the record. Absent information on country conditions, including of violence and ethnic and religious tension in Mumbai, and the affect of such conditions on the personal, financial or health situation of [redacted], the AAO cannot conclude that any hardship experienced as a result of relocation to India would be extreme [redacted] states that she is residing with family members in Mumbai, so the couple would not be without some support if they remained together in India. Although [redacted] would be separated from his family members and customary life in the United States if he relocated to India, the record does not support a conclusion that the hardship of this separation would be beyond that which is normally experienced in most cases of removal or inadmissibility. Again, absent evidence of his relationship to his older daughter, there is no way to assess whether separation from her would represent an extreme hardship for him.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [redacted] faces extreme hardship if his wife is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility 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. 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 individuals who are deported. *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). Statements in the record indicate that [redacted] is currently enduring hardship as a result of separation from his wife and child, but he has the option of avoiding the hardship of this separation by joining his wife, and there is no requirement that their U.S. citizen daughter reside outside the United States. There is no evidence to support the couple's assertions of financial or personal hardships [redacted] would suffer in India or in the United States. His situation, based on the record, is typical of individuals separated as a result of removal or inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.