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

U.S. Citizenship and Immigration Services

H3

FILE: [redacted] Office: NEW DELHI, INDIA Date: APR 22 2009

IN RE: [redacted]

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

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer In Charge (OIC), New Delhi, India. 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. He 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 and seeking admission within ten years of his last departure from the United States. He is married to a naturalized U.S. citizen and is the father of a U.S. citizen. He 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).

The OIC concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) on August 17, 2006.

On appeal, the applicant states that his family is in misery because of his inadmissibility. He further asserts that both his spouse and son are unable to adjust to life in India.

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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> . . . .
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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.
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> . . . .
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> (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.

The record indicates that the applicant entered the United States on October 19, 1993, without inspection, and resided in the United States until May 12, 2001, when he voluntarily departed to India. Therefore, the applicant was unlawfully present in the United States for over a year, from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until May 12, 2001, and is now seeking admission within ten years of his last departure. Accordingly, the applicant is

inadmissible to the United States 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 his son is not directly relevant to a determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to the qualifying relative in this application, the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence:

1. Statement from the applicant's wife, dated March 5, 2008, that indicates she is suffering from diabetes, hyperlipidimia and depression, that her son is suffering from atopic dermatitis, and that, without her husband in the United States, she is unable to support herself and her son.
2. Statement from [redacted], dated February 22, 2008, noting that the applicant's son has been his patient since 2005, that he has atopic dermatitis that flares up

when he visits India due to sunlight, dust and heat; and needs steroid ointments and to avoid environmental pollutants.

3. Statement fromm [redacted] of the Laser & Skin Care Center in Jalandar, India, dated November 22, 2007, asserting that the applicant's son has atopic dermatitis and must avoid sunlight, dust and heat.
4. Statement from [redacted], dated February 27, 2008, stating that the applicant's wife has been his patient since May 2005, and has diabetes and hyperlipidimia, and a "history of depression due to her family problems."
5. Statement by [redacted], Khanna Hospital & EEG Centre, Moga, India, dated September 11, 2006, asserting the applicant's wife is suffering from Mixed Anxiety Depressive Disorder that is aggravated by being in India.
6. Two handwritten statements from of Jalandhar City, dated August 10 and September 10, 2006, indicating that the applicant's son has allergic dermatitis.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant's spouse asserts that, as a part-time housekeeper, she cannot earn enough to support herself and her son, and will be forced to apply for public assistance. However, the AAO notes that the record contains a letter of employment for the applicant's spouse, which postdates her statement and indicates that she is no longer employed on a part-time basis as a housekeeper. The letter from FJC Aviation Services, Inc. states that the applicant's spouse is employed by them as an agent. In that the letter fails to indicate the applicant's spouse's salary, the AAO finds the record to be unclear as to the financial status of the applicant's spouse and her ability to support herself and her son on her current income. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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 also fails to establish that the applicant is unable to provide his spouse with financial assistance from outside the United States. The AAO notes that, at the time of his consular interview, the applicant informed the interviewing officer that he was employed, managing his family's gas station in Punjab.

The applicant's spouse states that her son is suffering from atopic dermatitis, and has submitted several medical documents establishing that he has been diagnosed with that condition and that it worsens when he is in India. However, the medical documents provided do not indicate the severity of the applicant's son's condition in the United States or when he travels to India. Neither do they demonstrate the level of care his condition requires. As the applicant's son is not a qualifying relative in this proceeding and the record fails to document how the severity of his condition or its treatment would affect his mother, the evidence of record is insufficient to establish that his condition, whether he resides in India or the United States, would result in extreme hardship to the applicant's spouse.

The applicant's spouse asserts that she is suffering from depression as a result of her husband's exclusion from the United States, and that she has been diagnosed with diabetes and hyperlipidimia. She has submitted statements from [redacted] and [redacted]. Dr. [redacted], a

neuropsychiatrist, certifies that the applicant's spouse is suffering from Mixed Anxiety Depressive Disorder, is being treated for this condition and that her problems worsen after arrival in India. Dr. [redacted] an internist, reports that the applicant's spouse has been his patient for three years and suffers from diabetes and hyperlipidimia, and that she has a history of depression as a result of unspecified family problems.

Although the input of any mental health professional is respected and valuable, the AAO notes that the [redacted] handwritten note fails to indicate the basis on which or the process through which he reached his conclusions concerning the applicant's spouse's mental health or to identify what treatment she is receiving for her condition. Without the detailed analysis commensurate with an established doctor-patient relationship, [redacted]s findings regarding the applicant's spouse's mental health are speculative and of diminished value to a determination of extreme hardship. While the AAO acknowledges [redacted] statement that the applicant suffers from diabetes and hyperlipidimia, it notes that he fails to indicate the severity of either condition or how they affect the ability of the applicant's spouse to function on a daily basis. Also, while [redacted] indicates that the applicant's spouse has a history of depression, he does not characterize that depression or its impact on the applicant's spouse. Accordingly, the medical documentation in the record is insufficient to establish that the applicant's spouse would suffer extreme emotional hardship if she joined the applicant in India or remained in the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's wife faces extreme hardship if her husband is refused admission. The AAO recognizes that the applicant's wife will suffer emotionally as a result of separation from the applicant. The record, however, fails to distinguish the hardship faced by the applicant's spouse as a result of the applicant's inadmissibility from the hardships normally associated with removal. Accordingly, they do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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 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 he 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.