



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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[REDACTED]

FILE:

Office: NEW DELHI, INDIA

Date:

NOV 01 2006

IN RE:

[REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

RECEIVED

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, New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer in Charge, dated May 31, 2006.*

On appeal, the applicant asserts that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver. *Form I-290B, dated June 24, 2006.*

In support of these assertions, the record includes, but is not limited to, an affidavit from the applicant; statements from the applicant's spouse; affidavits of [REDACTED] Licensed Psychologist, dated August 29, 2005 and June 12, 2006; medical notes, [REDACTED] Queens-Long Island Medical Group, P.D., dated November 29, 2005; New York Hospital Queens Emergency Department Discharge Instructions, dated September 3, 2005, March 5, 2006, and June 18, 2006; label for anti-depressant Lexapro; bank statements for the applicant and her spouse; employment letters for the applicant and her spouse; letters of support from friends; and country condition reports. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(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 Attorney General [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.

In the present application, the record indicates that the applicant had been issued a valid C1/D visa, but entered the United States without any documents or inspection on March 28, 1997. *Decision, Officer in Charge, dated May 31, 2006; United States Department of State IV Case Summary Accountability Report, Notes and Reminders, May 29, 2006.* In May 2001, an Immigrant Petition for Alien Worker (Form I-140) was filed on his behalf. *Form I-140.* The applicant received an Advance Parole to leave the United States in conjunction with the Form I-140. *Decision, Officer in Charge, dated May 31, 2006; United States Department of State IV Case Summary Accountability Report, Notes and Reminders, May 29, 2006.* The applicant returned to India on or about September 10, 2001. *Id.* On October 7, 2001 the applicant was intercepted at Washington, D.C. Dulles airport for attempting to re-enter the United States. *Form I-94.* He was placed into removal proceedings pursuant to section 212(a)(9)(B)(i)(II) of the Act. In proceedings before the Executive Office for Immigration Review, the applicant was allowed to withdraw his application for admission. *Order of the Immigration Judge, dated May 29, 2003.* The applicant was granted until June 11, 2003 to voluntarily depart the United States. *Id.* The applicant departed the United States on or about June 11, 2003. *Copy of airline ticket, dated June 11, 2003; United States Department of State IV Case Summary Accountability Report, Notes and Reminders, May 29, 2006.*

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until September 10, 2001, the date he departed the United States. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his September 10, 2001 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of section 212(a)(9)(B)(i)(II) 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. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 family ties to 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.

The AAO notes that extreme hardship to the Applicant's qualifying relative must be established in the event that she resides in India or in the United States, as the qualifying relative is not required to reside outside of the United States based on denial of the applicant's waiver request.

If the applicant's spouse travels with the applicant to India, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Pakistan and lived there until she came to the United States. *Affidavit of [REDACTED], Licensed Psychologist, dated August 29, 2005; Form G-325A for the applicant's spouse.* Both of the parents of the applicant's spouse reside in Pakistan. *Form G-325A for the applicant's spouse.* Nowhere in the record does it indicate that the applicant's spouse has any family, apart from the applicant, in India. The applicant is of the Hindu religion while the applicant's spouse is Muslim. *Letter from the applicant's spouse, dated June 19, 2006.* India is a Hindu dominant country, and there are clashes between Hindus and Muslims. *Id.; See Also Conflict between India, Pakistan runs deep, <http://www.cnn.com/WORLD/9708/India97/shared/sibling.rivalry/>.* The applicant's spouse is afraid to live in India, as she is the Muslim wife of a Hindu. *Letter from the applicant's spouse, dated June 19, 2006.* Additionally, after five decades of independence, the majority of Muslim women in India are among the most disadvantaged, least literate, economically impoverished and politically marginalized sections of Indian society. *Muslim Women in India by [REDACTED] <http://www.minorityrights.org/Profiles/profile.asp?ID=8>.* The social and economic issues confronting women in Muslim communities mandate attention as does the violation of their rights as citizens of India. *Id.* The applicant's spouse stated that it is not easy for her to get a visa to visit India because she was born in Pakistan and rivalry between India and Pakistan still exists. *Letter for the applicant's spouse, dated June 19, 2006.* The applicant's spouse visited the applicant in India for three weeks, as the government of India issued her a single-entry visa valid for three months. *Id.* The applicant's spouse does not think the government of India would allow her to remain there indefinitely. *Id.* The applicant's spouse does not believe that she would be able to find a job in India due to the economic situation. *Id.* India's labor force is growing at a rate of 2.5 percent annually, but employment is growing at only 2.3 percent. *India's employment perspective, <http://labourbureau.nic.in/wagetab.htm>.* Thus, the country is faced with the challenge of not only absorbing new entrants to the job market (estimated at seven million people every year), but also clearing the backlog. *Id.* The applicant's spouse also supports her family members who live in Pakistan. *Letter from the applicant's spouse, dated June 19, 2006.* The applicant's spouse suffers from high blood sugar, for which she has needed medical attention since November 2004. *Medical notes, Suneel Parikh, M.D., Queens-Long Island Medical Group, P.D., dated November 29, 2005.* She also went to the emergency room in September 2005 for painful urination and again on March 2006 for irregular vaginal bleeding. *New York Hospital Queens Emergency Department Discharge Instructions, dated September 3, 2005 and March 5, 2006.* Healthcare in India is inadequate. *Letter from the applicant's spouse, dated June 19, 2006.* In the context of poverty, access to public health systems is critical. *Review of Healthcare in India, edited by [REDACTED] and [REDACTED].* Since the 1990s, the public health system has been collapsing and the private health sector has flourished at the cost of the public health sector. *Id.* In 1991 there were approximately ten hospital beds per 10,000 individuals. *Healthcare in India, Wikipedia, text updated September 1995, page modified February 2, 2006.* Considering the applicant's

spouse's lack of family ties to India, her status as a Muslim Pakistani-born woman in India, the financial impact upon her, and the significant health conditions from which she suffers, the AAO finds that the applicant has demonstrated extreme hardship to his spouse in the event that she resides in India.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is depressed due to her separation from the applicant, and she has had suicidal thoughts. *Affidavit of [REDACTED] Licensed Psychologist, dated August 29, 2005.* If she cannot be reunited with the applicant in the United States, her depressive symptoms will continue to exacerbate. *Id.* At some point, it is possible that the applicant's spouse will lose hope and make an impulsive suicide gesture. *Id.* In November 2005, the applicant visited the Queens-Long Island Medical Group for follow-up on her impaired blood sugar and for symptoms of depression. *Medical notes, [REDACTED] Queens-Long Island Medical Group, P.D., dated November 29, 2005.* The applicant's spouse's doctor recommended close monitoring and follow-up by himself as well as a psychologist. *Id.* The applicant's spouse had a second interview with her psychologist on June 10, 2006. *Affidavit of [REDACTED] Ph.D., Licensed Psychologist, dated June 12, 2006.* During this interview, the psychologist stated that her situation was profoundly more serious than when she was diagnosed with Major Depressive Disorder during her first interview. *Id.* Her psychologist noted that the applicant's spouse's depression was and is a clear-cut, classic, text-book case of Major Depressive Disorder, and that since her initial evaluation, her depressive symptoms had worsened. *Id.* Due to her lack of medical insurance to continue with follow-up treatment, the applicant's spouse's psychologist recommended that she go to an emergency room in order to be evaluated for antidepressant medication. *Id.* On June 18, 2006 the applicant's spouse went to the emergency department of New York Hospital Queens to receive treatment for depression. *New York Hospital Queens Emergency Department Discharge Instructions for treatment of depression, dated June 18, 2006.* She received anti-depressant medication. *See label for Lexapro.* As previously noted, the applicant's spouse suffers from high blood sugar, for which she has needed medical attention since November 2004. *Medical notes, [REDACTED], Queens-Long Island Medical Group, P.D., dated November 29, 2005.* She also went to the emergency room in September 2005 for painful urination and again on March 2006 for irregular vaginal bleeding. *New York Hospital Queens Emergency Department Discharge Instructions for treatment of depression, dated September 3, 2005 and March 5, 2006.* Healthcare in India is inadequate. *Letter from the applicant's spouse, dated June 19, 2006; See Also Review of Healthcare in India, edited by [REDACTED] and [REDACTED]; Healthcare in India, Wikipedia, text updated September 1995, page modified February 2, 2006.* Based on all of the aforementioned factors, the AAO finds that separation will result in extreme hardship to the applicant's spouse.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957).*

The adverse factors in the present case are the applicant's illegal entry and prior unlawful presence for which he now seeks a waiver.

The favorable and mitigating factors are the extreme hardship to his spouse if he were refused admission, his supportive relationship with his spouse, and his lack of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.