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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: NEW DELHI Date: NOV 03 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The OIC found the applicant, [redacted] (Mr. [redacted] a 45-year old citizen of India, to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having procured admission into the United States by fraud or willful misrepresentation of a material fact.

The record reflects that Mr. [redacted] entered the United States with a passport that did not belong to him. As a result of this misrepresentation, the OIC found him to be inadmissible to the United States. *OIC's Decision,* dated March 28, 2005. The OIC also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, counsel asserts that Mr. [redacted]s father will suffer extreme hardship if his Form I-601 is denied. *Brief, dated April 21, 2005.*

In addition to the above mentioned brief, the record includes a report on Mr. [redacted] father by Dr. [redacted] Winters; a radiology report for the father of Mr. [redacted] various documents relating to the heart condition of Mr [redacted]s father; the naturalization certificate of Mr. [redacted]s father; and the green card of Mr. [redacted]s mother. The AAO reviewed the record in its entirety before reaching its decision.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

> The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h)(1)(B) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent or son or daughter of the applicant. Hardship to the applicant himself is not considered under the statute, except in relation to how it affects the qualifying relatives, in this case, the applicant's USC father and legal permanent resident (LPR) mother.

If extreme hardship to a qualifying relative, in this case the applicant's father, is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez*, 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).

As a preliminary matter, counsel asserts that the OIC failed to consider that Mr. [redacted] used the false passport to enter the United States because he was fleeing persecution in India. The AAO notes that the Act does not establish different levels of misrepresentation. In addition, the record shows that on September 18, 1997, Mr. [redacted] withdrew his asylum application before the Immigration Judge and agreed to voluntary departure and that Mr [redacted] has been living in India for the past 9 years.

Counsel asserts that Mr. [redacted] parents will suffer extreme hardship if their son is not permitted to join them in the United States. The record does not contain any hardship statement from Mr. [redacted] mother or father. Several documents, in fact, indicate that the applicant's mother is living with him in India.

Counsel asserts that Mr. [redacted] parents have a large family in the United States and very few relatives remaining in India but does not submit documentation to establish the immigration status of these family members or statements from them detailing how his parents would suffer if they relocated to India to join their son. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

Counsel asserts that Mr. [redacted] parents will suffer extreme financial hardship if Mr. [redacted] is not admitted to the United States because of on-going medical treatment they are receiving in the United States. The psychological report on Mr. [redacted] father, however, indicates that Mr. [redacted] mother has moved back to India already. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec.

582, 591-92 (BIA 1988). Counsel failed to address this inconsistency. Regarding the health of Mr. [redacted] father, the AAO does not wish to diminish the seriousness of his heart problems, but notes that the documents submitted regarding these conditions are not accompanied by any letter from a doctor explaining what conditions he suffers from and how his son's continued absence will result in extreme hardship to Mr. [redacted]

Counsel asserts that Mr. [redacted] father will suffer extreme psychological hardship if Mr. [redacted] is not admitted to the United States and submits a report from Dr. [redacted]. The AAO cannot give a large amount of weight to this report. Although the input of any mental health professional is respected and valuable, the AAO notes that Dr. [redacted] report was prepared on July 1, 2004, yet the record fails to reflect an ongoing relationship between Mr. [redacted] father and Dr. [redacted] or any other mental health professional. The report states that Dr. [redacted] prescribed Mr. [redacted] father anti-depressant medication but no copy of the prescription was included in the record. In addition, Dr. [redacted] recommends that Mr [redacted] father continue to see Dr. [redacted] once a week for his medication and individual psychotherapy but there is nothing in the record to indicate that this has occurred. *See Dr. [redacted] report, dated July 1, 2004.* For these reasons, little weight can be given to the report prepared by Dr. [redacted] insofar as it relates to the potential hardship Mr [redacted] will suffer if his son's waiver application is denied.

Although it is clear that his parents will suffer emotionally, if Mr. [redacted] is not admitted to the United States, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on Mr. [redacted] father, while difficult, does not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Mr. [redacted] parents face extreme hardship if Mr. [redacted] is refused admission and his father chooses to remain in the United States. U.S. 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) (upholding the BIA's decision in a case which addressed, *inter alia,* claims of emotional and financial hardship that Mr [redacted] deportation would cause to his spouse and children). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS, supra,* at 468.

In this case, although the applicant's father will endure emotional hardship if he remains in the United States separated from the applicant, or if he joins him in India and is separated from his family in the United States, their situation, based on the limited documentation in the record, does not rise to the level of extreme hardship. The record does not contain sufficient evidence to show that the hardship he faces rises beyond the common results of inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). 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) 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.