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

U.S. Citizenship and Immigration Services

[redacted]

H5

FILE: [redacted] Office: NEW YORK CITY Date: MAY 19 2010

IN RE: Applicant: [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).

Michael Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, New York City, New York, and 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 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. He sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director, dated July 30, 2009.* The applicant submitted a timely appeal.

On appeal, counsel asserts that the applicant has established extreme hardship to his spouse. Counsel contends that the director failed to consider the cultural and religious implications of the applicant and his spouse's "love marriage," and the impact of their marriage on the applicant's in-laws.

The AAO will first address the finding of inadmissibility. Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) 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.

In his waiver application, the applicant admits to seeking to procure admission into the United States by using someone else's passport. The record reflects that the applicant arrived in the United States at the Newark Airport from Copenhagen on June 22, 1996. He presented himself with the U.S. passport the U.S. passport bearing the name [redacted] and number [redacted] already in a document bag from a Scandanavian representative. The applicant admitted that the passport did not belong to him, admitted his true identity, and requested political asylum. The applicant asserted that his father and younger brother were killed by terrorists and that the terrorists were threatening his life as well. The applicant filed an asylum application in December 2003. In the affidavit accompanying the asylum application the applicant stated that his father died on April 17, 2000, which was after his father's release from prison. The applicant claimed that his father died from injuries sustained while in prison. In the applicant's exclusion hearing, he conceded that he was inadmissible for having procured admission to the United States by fraud or willful misrepresentation of a material fact. The immigration judge also determined that documentary evidence established that the applicant lied when he claimed that his father died in 1996, as the submitted evidence established his death in 2000 due to a motorcycle accident. The immigration judge found the applicant excludable under section 212(a)(6)(C) of the Act. Therefore, we must find the applicant is inadmissible under section 212(a)(6)(C) of the Act for having willfully misrepresented the material fact of his true identity and his eligibility for admission into the United States on June 22, 1996. Furthermore, the applicant is inadmissible under section 212(a)(6)(C) of

the Act for willfully misrepresenting the material fact of the date of his father's death and, consequently, his eligibility for asylum.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Hardship to the applicant and to his child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO will consider all of the evidence in the record.

Extreme hardship to the applicant's qualifying relative must be established in the event that she remains in the United States without the applicant, and alternatively, if she joins the applicant to live in India. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant's wife contends that life would be difficult for her and her child in India. She states that she would experience economic hardship in India because her husband will be unable to support them due to the high unemployment and low salaries in India. The applicant's spouse contends that she would experience culture shock, societal restrictions, and be dominated by her mother-in-law. She asserts that because she did not bring a proper dowry her in-laws will not respect her. Lastly, the applicant's wife expresses her concern about polluted air and water, medical care in India, and educational opportunities.

The hardship factors asserted here are the applicant's wife's concern about obtaining employment to support their family, cultural shock, societal restrictions, her in-laws, pollution, medical care, and educational opportunities. However, no documentation has been presented to establish that the applicant and his spouse will be unable to obtain employment in India that would be sufficient to support their family. Even though the applicant's spouse contends that she will experience culture shock, societal restrictions, and be dominated by her mother-in-law, she has not fully demonstrated how those factors would cause her extreme hardship. Furthermore, although the applicant's spouse claims because she may not be respected because she lacks a proper dowry, her claim carries less weight in that she has already stated that her in-laws have welcomed her during her visits to India, and [redacted] conveys that the applicant's spouse is close to her sisters-in-law and gets along with her mother-in-law. No documentation has been provided in support of the applicant's wife's concern about polluted air and water, medical care, and educational opportunities. In conclusion, we find that the applicant has not shown that the combination of hardship factors demonstrate that his spouse will experience extreme hardship if she joined him to live in India.

With regard to remaining in the United States without the applicant, the psychological evaluation by [redacted], dated May 31, 2009, conveys the following. The applicant's spouse has had no contact with her parents because of her "love marriage" to the applicant. The applicant and his spouse's child never met his maternal grandparents. The applicant is his family's sole wage earner and his wife will be hard-pressed to raise their son on her own, especially due to estrangement from her family and not being able to rely on her brother-in-law for support. The applicant's spouse conveys that being a single mother is a stigma in her culture. The applicant and his wife are of the Sikh faith. The applicant's spouse is at risk of having major clinical depression if separated from her husband, which condition will impact their child. The applicant and his wife live with the applicant's sister and husband. We note that the applicant's spouse states in her affidavit that she is estranged from her parents and five siblings because of her "love marriage," and that she cannot support herself and her child and will have no place to live if her husband leaves the country. She asserts that she is an outcast in her community because of being perceived as a bad influence on daughters. She contends that her child will be unusual because he will be fatherless. The record shows that the applicant is employed in the construction field and earns $360 every week with [redacted]

Family separation must be considered in determining hardship. In *Salcido-Salcido v. INS,* 138 F.3d 1292 (9th Cir. 1998) the Ninth Circuit discussed the effect of emotional hardship on the alien and her husband and children as a result of family separation. The Ninth Circuit stated that "the most important single hardship factor may be the separation of the alien from family living in the United States" and that there must be a careful appraisal of "the impact that deportation would have on children and families." *Id.* at 1293. Furthermore, the Ninth Circuit indicated that "considerable, if not predominant, weight," must be attributed to the hardship that will result from family separation. *Id.* In *Yong v. INS*, 459 F.2d 1004 (9th Cir. 1972), the Ninth Circuit reversed a BIA decision denying an application for suspension of deportation, noting that "[s]eparation from one's spouse entails substantially more than economic hardship." *Id.* at 1005. Similarly, the Third Circuit in *Bastidas v. INS*, 609 F.2d 101 (3rd Cir.1979) explicitly stressed the importance to be given the factor of separation of parent and child.

The hardship factors asserted in the case are the applicant's wife not being able to financially support herself and her child and the emotional hardship of separation. In view of the substantial weight that is given to family separation in the hardship analysis, and in light of the significant impact that the applicant's wife indicates that separation from the applicant will have on her, we find the applicant has demonstrated that the hardship that his wife will experience as a result of separation is extreme.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Because the applicant is statutorily ineligible for relief, no purpose is 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(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.