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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

[redacted]

H6

FILE: [redacted] Office: NEW DELHI, INDIA Date: MAR 1 2 2010

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. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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).

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who resided in the United States from October 25, 1996, when he was admitted as a visitor for pleasure, to August 25, 2003, when he returned to India. He was found to be inadmissible to the United States under 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 one year or more. The applicant is the son of a Lawful Permanent Resident mother and the beneficiary of an approved Petition for Alien Relative filed by his brother. 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) in order to return to the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated August 27, 2007.

On appeal, the applicant asserts that his mother is experiencing extreme hardship due to separation from the applicant. Specifically, he states that his mother suffers from medical conditions that render her disabled and she relied on the applicant for support and assistance when he resided in the United States. *See Applicant's Statement in Support of Appeal.* He further states that his mother is suffering psychological hardship due to separation from the applicant and concern over his immigration situation. *See Applicant's Statement in Support of Appeal.* The applicant additionally asserts that his mother would suffer extreme hardship if she relocated to India and would not have access to adequate medical care there. In support of the waiver application and appeal the applicant submitted a letter from his mother, letters from his mother's doctors, a letter from her landlord, and a copy of his mother's Medicaid card. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 Secretary, 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.

Section 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a fifty-eight year-old native and citizen of India who resided in the United States from October 25, 1996, when he entered as a visitor for pleasure, to August 25, 2003, when he returned to India. The applicant was found to be inadmissible for having been unlawfully present in the United States from April 24, 1997, the date his authorized stay expired, to August 25, 2003. The applicant's mother is a seventy-four year-old native of India and Lawful Permanent Resident. The applicant currently resides in New Delhi, India, and his mother resides in Vicksburg, Mississippi.

The applicant asserts that his mother has experienced extreme hardship since his departure because she suffers from various medical conditions and needs daily assistance from a family member. *See letters from the applicant* dated June 16, 2007 and February 1, 2007. Letters from the applicant's mother's physician further state that she has Type II diabetes and degenerative arthritis and needs help taking her medication, checking her blood sugar, and communicating in English with her physicians. *See Letter from* [redacted]. dated September 18, 2007. The applicant's

mother states that she is suffering from various medical conditions that require treatments at different hospitals and that her condition is worsening. *Undated Declaration of* [redacted] She further states,

> [M]y son, [redacted] and his family are in the United States of America, but they live several miles from me . . . in Vicksburg, MS. They are very busy people and engaged in work or school almost all of the twenty-four hours in a day and have no time at all to call at my place of living. . . My survival is based upon the social security fund and medical assistance extended to me by the Government of the USA. But that is the physical part of my existence. On the emotional and psychological front, I am altogether in isolation, a victim of loneliness and the fear that, with this pathetic states of affairs, I may be alone when the end of life arrives. *Undated Declaration of* [redacted]

The record indicates that the applicant's mother has been a Lawful Permanent Resident since 1992 and that she suffers from several medical problems, including diabetes and degenerative arthritis as well as back pain resulting from bulging and herniated discs. She also had cataract surgery in 2007. She is receiving Medicaid and has been under the care of the same physician since 2001. She has an adult son who lives in the same city and whose oldest son is providing her with assistance. In light of her length of residence and family ties to the United States as well as her medical conditions, for which she is receiving care in the United States, relocating to India would cause the applicant's mother to suffer physical and emotional hardship beyond the common results of removal or inadmissibility and that would rise to the level of extreme hardship.

The record indicates that the applicant's mother needs daily assistance with her medical care, including taking medications and checking her blood sugar, as well as assistance because of her arthritis and recovery from surgery if necessary. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The applicant's mother states that her son and his family also live in Vicksburg, Mississippi but that they do not have time to provide her with assistance or visit her at her home. No further detail was provided concerning why her adult son or his wife, who, according to the applicant, does not work outside the home, cannot assist in the care the applicant's mother. Further, the record indicates that the applicant's brother has four children, and his mother's physician states that one grandson has been helping his grandmother a lot with translating at her medical appointments and administering her medication. *Letter from* [redacted] dated September 18, 2007. Although [redacted] states that this grandson will not be available once he goes to college, there is no evidence on the record indicating that he will be moving away to attend a school or that none of his three siblings is old enough to provide this care. There is no indication that there are any unusual circumstances that would prevent the applicant's brother, sister-in-law or other relatives from provided his mother with the care she requires.

The applicant's mother states that she is isolated and lonely and she longs for the presence of the applicant because of their mutual affection and his desire to attend to her needs. She further states, "I am a victim of phobia, aloofness, and depression, I need and look forward to his assistance."

Although the applicant's mother claims to be suffering from emotional hardship due to the applicant's absence, no evidence concerning her mental health or the psychological effects of their separation was submitted. The evidence on the record does not establish that any difficulties she is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of child's deportation or exclusion. Although the depth of her distress caused by the prospect of being separated from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Any emotional or physical hardship the applicant's mother would experience if he is denied admission and she remains in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his Lawful Permanent Resident mother as required under section 212(a)(9)(B)(v) the Act.

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 remains entirely with the applicant. 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.