



U.S. Citizenship
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FILE:



Office: PANAMA CITY, PANAMA

Date: MAY 12 2006

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Panama City, Panama. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of India. The applicant is the spouse of a lawful permanent resident (LPR) and is the beneficiary of a petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to §§ 212(a)(6)(C)(i) and (a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and (a)(9)(B)(II). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The acting officer in charge found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse, and he denied the application accordingly. On appeal, counsel contends that the applicant is not subject to inadmissibility pursuant to § 212(a)(9)(B)(i)(II), since he was not in the United States without authorization for over one year. Counsel also maintains that the applicant's wife is suffering extreme emotional and financial consequences due to the applicant's inadmissibility. On appeal, counsel submits affidavits by the applicant and his wife and inlaws, a psychological evaluation of the applicant's wife, a U.N. report about the status of women in India, eleven letters of recommendation, and other documentation. The entire record was reviewed in rendering this decision, and the AAO concurs with the district director's finding that the applicant has failed to establish that his wife will suffer extreme hardship if he is not allowed to enter the United States.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The acting officer in charge based the finding of inadmissibility under this section on the applicant's failure to inform the consular officer when applying for a visitor's visa that the applicant actually intended to return to the United States to resume operating his business.

Section 212(i) provides, in pertinent part:

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

8 U.S.C. § 1182(i)(1).

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

(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.

Contrary to the acting officer in charge's finding that the applicant resided unlawfully in the United States for over one year (from 1998 to 2000), the record reflects that the applicant was unlawfully present in the United States over 180 days but less than one year. The applicant was given authorization to remain in the United States on a B-2 visa until April 8, 1999. The immigration judge granted him voluntary departure on February 7, 2000, and he departed from the United States on May 20, 2000. The period beginning on February 7, 2000 until he departed was considered to be a stay authorized by the attorney general (now secretary of the Department of Homeland Security). The applicant was therefore unlawfully present between April 8, 1999 and February 7, 2000, and he is seeking readmission over three years after May 20, 2000. He is therefore not inadmissible pursuant to § 212(a)(9)(B) of the Act.

The applicant, however, is inadmissible pursuant to the provisions of § 212(a)(6)(C)(i) of the Act, because he misrepresented material information in order to obtain a visa to enter the United States. In order to be eligible for a § 212(i) waiver of this ground of inadmissibility, the applicant must show that his LPR wife would suffer extreme hardship if he is not admitted to the United States. Hardship to the alien himself or to his children is not a permissible consideration under the statute.

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 alien has established extreme hardship to a qualifying relative pursuant to § 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. The BIA has held:

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).

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).

The record in the instant case indicates that the applicant's wife has been managing the family's motel without the applicant since his departure in 2000. The applicant's inlaws, who are 58 and 61 years old, respectively, live with his wife and apparently assist her to some extent. The applicant's wife also cares for their two children. The applicant's wife writes in her affidavit on appeal that she feels exhausted, stressed, and lonely due to the burden of running their motel while caring for her family in the applicant's absence. While the AAO acknowledges that this situation requires great effort on the part of the applicant's wife, the evidence does not support the claim that she is unable to handle the burden.

Counsel submits a psychological evaluation prepared on December 1, 2004 by [REDACTED] who met with the applicant's wife for one ninety minute session. [REDACTED] wrote that the applicant's wife suffers from depression, and he recommended that she seek "individual counseling for issues of personal exploration and growth..." [REDACTED] indicated that the applicant's wife had not previously sought any psychological or psychiatric treatment, although she reported experiencing depression since the applicant's departure in 2000. The record contains no medical or other documentation that would establish that the applicant's wife is more negatively affected by the applicant's absence than other spouses of removed individuals.

There is no documentation on the record to establish that the applicant's wife would suffer extreme hardship if she remains in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, difficulties arising whenever a spouse is not admitted to the United States.

The record does not establish the applicant's wife's immigration status in Panama, although it appears that she resided or was present in that country prior to entering the United States. The AAO is unable to determine if she could return to reside with the applicant in Panama, and counsel does not address the consequences should she choose to do so.

Regarding the applicant's wife's return to her native India, if she and the applicant decide to relocate to that country, the applicant's wife writes that she would suffer economic hardship, as she would be unemployed there. She states that she does not know how to do anything other than manage a motel, and that if she leaves the United States, she will be forced to close the motel and lose her only source of income. The record includes country conditions information regarding the weak status of women's rights in India; however, the evidence does not show that the applicant's wife would be unable to find employment in India if she were required to work. The record does not establish that the applicant would be unable to support his wife and children if they leave the United States to accompany him.

The applicant's wife also writes that her parents and brother live in the United States, and that she has no family ties in India. She indicates that the separation from her family would cause her to suffer. She also

notes that she would be unhappy at having to uproot her children and interrupt their education. The concerns are not taken lightly, but they are not more serious than those of other family members in similar situations.

Congress provided for a waiver of inadmissibility only under limited circumstances. 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, and thus the familial and emotional bonds, exist. The law requires that in order to meet the standard expressed in § 212(i) of the Act, the hardship must go above and beyond the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). **Further**, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his wife as required under § 212(i) of the Act, 8 U.S.C. § 1182(i). In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.