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FILE:

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Office: ATLANTA, GEORGIA

Date: APR 17 2007

[Redacted] consolidated therein]

IN RE:

[Redacted]

APPLICATIONS:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, Georgia. 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 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 misrepresenting her date of entry into the United States in order to obtain an immigration benefit. The record indicates that the applicant is the wife of a lawful permanent resident and she is the beneficiary of an approved Petition for Alien Relative (Form I-130), which was filed by her mother-in-law for her spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her lawful permanent resident spouse.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's lawful permanent resident spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 31, 2002.

On appeal, the applicant, through counsel, claims it would be an extreme hardship to her husband and son if she is removed from the United States. *Form I-290B*, filed June 27, 2002.

The record includes, but is not limited to, counsel's brief and numerous tax documents for the applicant, her husband, and her husband's parents. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

- (i) 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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (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 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 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 AAO notes that the record contains several references to the hardship that the applicant's son would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on November 19, 1989, the applicant was admitted to the United States on a B1/B2 nonimmigrant visa, with authorization to remain in the United States until May 18, 1990. On July 28, 1994, the applicant married Mr. [REDACTED] f, in Decatur, Georgia. On July 20, 1995, Mr. [REDACTED] Petition for Alien Relative (Form I-130), which was filed by his mother, a naturalized United States citizen, was approved. On May 4, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and a Form I-601. In the Form I-485, the applicant admitted that she provided fraudulent information in a previous application for adjustment of status. On May 31, 2002, the District Director denied applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate an extreme hardship to a qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse. 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, 565-66 (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 to a qualifying relative. 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.

Counsel asserts that when "considering § 212(i), fraud and misrepresentation used to obtain a visa should not be held as an adverse factor." *Brief to the Commissioner of the Administrative Appeals Unit*, filed June 27, 2002. Counsel further asserts that "caselaw precedent provides for the use of [a] § 241(f) analysis as guidance in considering Petitioner Shariff's § 212(i) present case." *Id.* However, section 241(f) of the Act was repealed by section 602(b)(1) of the Act of 1990, 104 Stat. at 5081. Similar provisions now appear at section 241(a)(1)(H) of the Act. See generally *Matter of Garawan*, 20 I&N Dec. 938, 940-41 & n.3 (BIA 1995). The provisions of section 241(f) of the Act and section 212(i) of the Act, prior to the enactment of the

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. 104-208, were strictly discretionary, in that they did not require a showing of extreme hardship to a qualifying relative. There is also a discretionary element in a current section 212(i) waiver analysis; however since the enactment of IIRIRA, the applicant must first establish extreme hardship to a qualifying relative. Therefore, counsel's argument that a section 241(f) analysis should be used in determining the applicant's eligibility for a section 212(i) waiver is not persuasive.

Counsel makes no argument that the applicant's husband would face extreme hardship if he relocated to India in order to remain with the applicant. The only statement counsel makes regarding the applicant's husband is that "[i]f the waiver is not granted for the [applicant], it would cause extreme hardship for the husband in that he would be deprived of his life companion and a mother to their only son." *Brief to the Commissioner of the Administrative Appeals Unit, supra*. The AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding the extreme hardship he would suffer if the applicant were removed from the United States. Additionally, counsel makes no argument on whether the applicant's husband is suffering from any emotional or psychological problems. Counsel states the applicant's son would face extreme hardship if he accompanied his mother to India. "The economic and political conditions in India are such that if the waiver is not granted and the [applicant] is forced to return to India, she will not be able to take their United States citizen son with her. The school system and living conditions being so poor in India, and their United States citizen son not being able to speak any other language than English, their United States Citizen son would be deprived of its [sic] rights to the education level and life opportunities offered in the United States." *Id.* The AAO notes that the applicant's United States citizen son is not a qualifying relative for a waiver under section 212(i) of the Act. Counsel states the applicant is "very close" to her naturalized United States citizen mother-in-law; however, the applicant's mother-in-law is not a qualifying relative under section 212(i) of the Act, either. Counsel fails to address whether the applicant has any ties or relatives in India. The AAO notes that counsel fails to provide any evidence on whether or not the applicant's husband could obtain employment in India, to help support his family. Additionally, there is no evidence that the applicant's son, who is eleven (11) years old, could not easily adjust to the culture in India. The AAO finds that the applicant failed to demonstrate how her husband would suffer any extreme hardship if he joined the applicant in India.

The applicant does not establish extreme hardship to her lawful permanent resident spouse if he remains in the United States. Counsel's statements regarding the extreme hardship the applicant's spouse will suffer if the applicant were removed from the United States were vague and not supported by documentation. The AAO, therefore, finds the applicant has failed to establish extreme hardship to her spouse if he remains in the United States, maintaining his employment, education for his son, and close proximity to his family. As a lawful permanent resident, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. No documentation was submitted to establish that the applicant's husband will experience a major financial hardship as a result of the separation from the applicant. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Further, beyond generalized assertions regarding country conditions in India, the record fails to demonstrate that the applicant will be unable to contribute to her

family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

Although the AAO is not insensitive to the applicant's situation, the financial strain of visiting the applicant in India and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

United States 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). 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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 *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.