

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE:

Office: NEWARK, NJ

Date: AUG 02 2007

IN RE:

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:

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 District Director, Newark, New Jersey, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident. She 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 spouse.

The district director concluded that the applicant had 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) accordingly. *Decision of the District Director*, dated July 12, 2005.

The record reflects that in July 1993 the applicant traveled to the United States with a passport belonging to another person. On December 11, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On May 18, 2005, the applicant appeared at Citizenship and Immigration Services' (CIS) Newark, New Jersey District Office. The evidence of record establishes that during her interview the applicant acknowledged that in July 1993, she entered the United States with a passport belonging to another person. On June 7, 2005, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse.

On appeal, counsel contends that the district director incorrectly applied the standard of "exceptional and extremely unusual hardship" instead of "extreme hardship" to the applicant's case. Counsel asserts that the evidence submitted with the waiver application clearly established that the applicant's spouse would suffer extreme hardship. *See Counsel's Brief*, dated August 12, 2005. In support of his contentions, counsel submits the referenced brief, updated affidavits from the applicant and her spouse, medical documentation for the applicant's spouse, country conditions reports and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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

- (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.

....

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

Section 212(i) of the Act provides:

- (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 district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's testimony during her interview. On appeal, counsel does not contest the district director's determination of inadmissibility.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences is not considered in section 212(i) waiver proceedings.

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 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. 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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence.

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 reflects that, on May 26, 1981, the applicant married her spouse, [REDACTED]. [REDACTED] is a native and citizen of India who became a lawful permanent resident in 2003. The record indicates that the applicant and [REDACTED] are in their 40s. The applicant and [REDACTED] may have some health concerns.

On appeal, counsel asserts that, despite the district director's consistent referral to "extreme hardship" in her decision, the district director applied the higher standard of "exceptional and extremely unusual hardship." Counsel asserts that the district director implied that hardship the qualifying relative encounters needs to not only amount to "beyond the usual," but to reach the level of substantially beyond the usual hardships encountered by aliens and families upon removal. Counsel asserts that the district director overstepped the boundaries of the statute when she found that in "only cases of great actual prospective injury to the United States citizen will the bar be removed. Common results to the bar, such as separation, financial difficulties, etc., in themselves, are insufficient to warrant approval of an application unless combined with more extreme impacts." The AAO finds counsel's assertions to be unpersuasive. 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). The AAO finds that the district director appropriately applied the standard of "extreme hardship" as set forth by the statute and precedent decisions interpreting what constitutes "extreme hardship."

On appeal, counsel asserts that [REDACTED] will suffer extreme hardship if the applicant is denied a waiver application because the only family ties they have are each other. Counsel asserts that to separate them is the epitome of "exceptional and extremely unusual hardship." Counsel asserts that [REDACTED] fears that the applicant's asthma would be exacerbated by the desert-like state of Gujarat, the area from which the applicant and [REDACTED] come. Counsel also asserts the despair, shock and anguish of separation from [REDACTED] would cause the applicant's asthma to be aggravated, causing unstable health conditions with unpredictable consequences. Counsel asserts that, without the applicant's income, the regular costs of the household would be too much for [REDACTED] and he would have to sell the house they currently own. Counsel asserts that [REDACTED] would also have to maintain a second household in India, which would reduce [REDACTED]'s savings. Counsel asserts that [REDACTED] has become a vegetarian through his conversion to the Swaminarayan sect of Hinduism. Counsel asserts that [REDACTED] has only been able to do this due to the applicant's presence and that he has never learned how to cook in compliance with the sect's restrictions. Counsel asserts that there is a risk that [REDACTED] might encounter significant health problems caused by lack of proper nutrition if he were to attempt to live according to his beliefs without the applicant's assistance in the preparation of meals.

[REDACTED], in his affidavits, states that he fears for the applicant's health if she is forced to return to India because her asthma is likely to become worse in the desert region from which they come. He states that he has no confidence in the medical treatments and options available to her in India. He states that, if a serious asthma attack occurred, she might not receive the proper attention. He states that he completely relies on the applicant to cook him meals in compliance with his religious beliefs, that he has never learned to cook and

that he fears his health would quickly deteriorate if he had to fend for himself. He states that, in paying off the mortgage for the house they currently own, he took into consideration the applicant's future income. He states that without the applicant's income he would have to sell the home in order to support himself in the United States and his wife in India. He states that the applicant would be able to find employment in India but could not allow her to live on the small amount of money she would earn. He states that this would require him to send portions of his savings and the money tied up in the house to the applicant in India. He states that he would not be able to maintain the respectable lifestyle to which he has become accustomed. He states that if the applicant returns to India, he will be deprived of the principles of family unity, liberty and the pursuit of happiness that every individual in the United States is allowed to enjoy. He states that he will suffer an irreparable loss and could slip into mental agony. He states that, when he was informed that the applicant might not be allowed to remain in the United States, it made him sick and he suffered from depression and psychological trauma.

Medical documentation indicates that the applicant has been under the care of a primary care physician for her asthma since 1993 and that she is doing better medically since she was placed on the medications he prescribed for her. While the medical documentation indicates that the applicant is prescribed medications for her asthma, the documentation does not indicate whether she requires long-term medical care, what the prognosis is for her condition, that her treatment requires the presence of [REDACTED] and/or she would be unable to receive appropriate medical treatment in the absence of [REDACTED] or in India. There is no evidence in the record that [REDACTED] suffers from any physical or mental illness.

Financial records indicate that [REDACTED] earns approximately \$12,480 per year without overtime. There is no evidence to suggest that [REDACTED] would be unable to perform work duties, daily activities or learn to cook nutritious meals that meet the requirements of his religious beliefs due to any physical or mental illnesses. The record reflects that the applicant has family members in India, such as her adult daughter who may be able to provide physical and financial assistance to the applicant, thereby easing [REDACTED]'s financial responsibilities. The record shows that, even without assistance from the applicant, [REDACTED] has, in the past, earned more than sufficient income to exceed the poverty guidelines for his household in the United States. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While [REDACTED] may have to lower his stand of living and sell his house, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to [REDACTED] if he had to support his family without additional income from the applicant, even when combined with the emotional hardship described below.

While the medical documentation indicates that the applicant suffers from asthma, there is no evidence in the record to suggest that the applicant would be unable to receive appropriate treatment in India or that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal. Although the AAO notes [REDACTED]'s claim to have suffered psychological trauma when he learned that the applicant might be returned to India, the record provides no evidence to support his statement. The record reflects that the applicant has family members in India, such as her adult daughter, who may be able to assist her physically and emotionally, thereby easing [REDACTED]'s concerns that she will be alone in India with no one to care for her. While the AAO acknowledges that [REDACTED] would experience distress and some level of depression as a result of his separation from the applicant, the record does not establish that these emotions are beyond those commonly suffered by aliens and families upon removal.

Counsel asserts that [REDACTED] would suffer extreme hardship if he accompanied the applicant to India because he has become greatly accustomed to the American way of life and that any major or significant disruption from this way of living could cause him extreme physical, mental and emotional hardship. Counsel asserts that any significant or family relations [REDACTED] once had in India have long been severed and broken due to the length of time he has been away. Counsel asserts that [REDACTED] fears that the applicant's asthma would be exacerbated by the desert-like state of Gujarat, the area from which the applicant and [REDACTED] come. Counsel asserts that the political, religious and economic conditions of India still remain difficult with the unemployment rate at nearly double that of the United States. Counsel asserts that Gujarat is the site of many riots and religious upheavals and that, although things are calming down, it is still considered to be a volatile area of India. Counsel asserts that the applicant and [REDACTED] consider their Hindu temple in Atlantic City to be the centerpiece of their lives and that to be separated from the temple and its members would be akin to being separated from a loved one. Counsel asserts that [REDACTED] would not be able to find employment in India sufficient to cover his expenses and that the money from the sale of his home in the United States would quickly dwindle. Counsel asserts that [REDACTED]'s loss of the money he has put into his house and the burden of maintaining a similar lifestyle in India, as well as the other direct and indirect expenses associated with having to leave the United States, should be significant factors when [REDACTED] has nothing else. Counsel asserts that it is presumable that [REDACTED] would not be offered a significant job opportunity in India at this point in his life and career and that he would have to begin his career anew.

[REDACTED], in his affidavits, states that he no longer has family ties in India and that, except for a few friends and classmates, he has not maintained relationships with anyone in India, including his family. He states that he fears for the applicant's health if she is forced to return to India because her asthma is likely to become worse in the desert region from which they come and he has no confidence in the medical treatment and options available to her in India. He states that, if a serious asthma attack occurred, she might not receive the proper attention. He states that if he returns to India, his savings and earnings would quickly be depleted and he would be fortunate just to get an entry-level job. He states that his friends in India have indicated that his employment history with casinos in the United States may be frowned upon by certain employers, thereby further limiting his job prospects. [REDACTED] states that he has become accustomed to a certain standard of living and that for him to maintain some semblance of this standard he would need to use a significant amount of money that is tied up in his house.

Having analyzed the hardships the applicant and his counsel claim [REDACTED] will suffer if he were to accompany the applicant to India, the AAO finds that they do not constitute extreme hardship. Counsel asserts that, if [REDACTED] is honest in regard to his employment history with a casino, a significant number of employers will not consider him because gambling is illegal and considered taboo in India. However, there is no evidence in the record that [REDACTED] would suffer any consequences as a result of his employment in the U.S. gaming industry. There is no evidence in the record to suggest that the applicant and [REDACTED] would be unable to obtain any employment in India. While the employment they may be able to obtain may not be comparable to the employment they have in the United States, economic detriment of this sort is not unusual or extreme. See *Perez v. INS, supra; Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). While the medical documentation indicates that the applicant suffers from asthma, there is no evidence in the record to suggest that she would be unable to receive proper care or treatment in India, or that [REDACTED]'s concerns about the applicant's health constitute an extreme emotional hardship.

Counsel asserts that [REDACTED] and the applicant would be returning to a volatile area of India and has submitted a September 23, 2004 article from Human Rights Watch regarding Hindu extremists' intimidation of individuals who are witnesses against those responsible for the anti-Muslim riots that occurred in Gujarat in 2002. However, there is no evidence in the record that establishes that either [REDACTED] or the applicant, neither of whom indicate they are involved in the prosecution of these cases, would be at risk from Hindu extremists if they returned to India. Further, the applicant and [REDACTED] may choose to move to another area of India. Although counsel asserts that to ask the applicant and [REDACTED] to return to a different area of India would be unjust and unfair because each area of India has developed significantly differing cultures, languages and customs, there is no evidence in the record to support counsel's assertions. Accordingly, while the hardships that would be faced by [REDACTED] with regard to relocation to India, readjusting to the culture, economy, and environment; separation from friends in the United States and an inability to maintain the standard of living or have the opportunities and health care that are available to him in the United States, are unfortunate, they are what would normally confront any spouse accompanying a removed alien to a foreign country. Finally, as previously noted, [REDACTED] is not required to reside outside the United States as a result of the denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions, inconveniences, and difficulties that arise whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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 point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be 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 has 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(i). 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 an application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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. The application is denied.