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U.S. Citizenship
and Immigration
Services



H2

FILE:



Office: NEW DELHI, INDIA

Date:

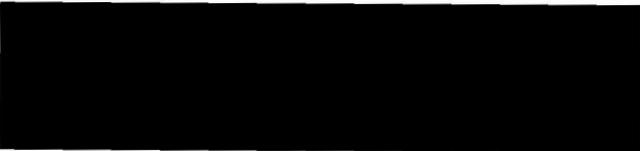
JAN 11 2011

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:



RECEIVED

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 Officer in Charge, 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 was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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 his spouse.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge, dated March 14, 2006.*

On appeal, the applicant contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that he failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B.*

In support of these assertions, counsel submits a statement. The record also includes, but is not limited to, a letter written by ██████████ Southeast Eye Specialists, December 12, 2006; a letter written by ██████████, Marriage and Family Therapy, February 1, 2005; a statement by the applicant's spouse; and tax statements. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides 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 record reflects that the applicant attempted to enter the United States on March 30, 1997 as a nonimmigrant visa for pleasure. At the time of his application for visa, the applicant failed to disclose the fact that his wife was a lawful permanent resident to the Consular Officer. Based on the record, the AAO finds that the applicant committed a misrepresentation and is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in India or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to India, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of India. *See naturalization certificate*. She has numerous family members, including her parents and siblings, in the United States. *See list of relatives*. The applicant's spouse has no significant family ties in India. *Attorney's statement*. The applicant's spouse owns 51% of a business in the United States. *See tax statement*. The applicant's spouse has worked very hard to build up this business to make it a viable enterprise. *Attorney's statement*. The applicant's spouse would lose her business interest if she were to return to India. *Id.* While the AAO acknowledges this statement, it does not find; however, that the record demonstrates that the applicant and his spouse would be unable to sustain themselves and contribute to their family's financial well-being from a location outside of the United States, nor does the record indicate precisely what the applicant's spouse's responsibilities are in the family owned business, how her departure would impact the business or why she would have to lose her interest if she were to leave. The applicant and his spouse have a child who has a condition called epiblepharon in which her eyelids have an extra fold of skin causing them to turn onto the corneas of her eyes. *Letter written by [REDACTED] Southeast Eye Specialists, December 12, 2006*. This has caused the child to have corneal abrasions which have been treated. *Id.* As a result of this condition and the fact that it is causing scrapes to her eyes, the applicant's child is being sent for a consultation for possible surgery to correct this condition. *Id.* While the AAO acknowledges the health condition of the applicant's child, it notes that the child is not a qualifying relative in this case. Furthermore, the AAO notes that the child's condition is not life-threatening and appears to be treatable. As such, the AAO does not find that the child's condition would impact the applicant's spouse to the extent that she would suffer an extreme hardship if she traveled to

India. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in India.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As noted previously, the applicant's spouse has numerous family members and support in the United States. *See list of relatives*. The applicant's spouse has built up a business in the United States. *See tax statement*. The AAO observes that the applicant's spouse is financially stable and has visited the applicant periodically in India. *Letter written by [REDACTED] Marriage and Family Therapy, February 1, 2005; See Also tax statements*. The applicant's spouse is exhibiting symptoms of depression due to her separation from the applicant. *Letter written by [REDACTED] Marriage and Family Therapy, February 1, 2005*. While the AAO acknowledges the applicant's spouse's symptoms of depression, U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be 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(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.