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20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: NEW DEHLI, INDIA Date: SEP 25 2007

IN RE: Applicant: [Redacted]

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 application was denied by the Officer in Charge, New Dehli, India on June 15, 2005. A subsequent appeal was rejected by the Administrative Appeals Office (AAO) as untimely filed, on January 16, 2007. The AAO now moves to reopen the matter *sua sponte* based on evidence of timely filing of the appeal. The January 16, 2007, AAO decision will be withdrawn. The appeal will be dismissed and 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). The applicant seeks a waiver of his ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found that the applicant had failed to establish a qualifying family member would suffer extreme hardship if the applicant were refused admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant indicates, through counsel, that the officer in charge improperly used his ground of inadmissibility as an adverse factor in denying his Form I-601 waiver application. The applicant indicates further that the officer in charge failed to properly review the evidence of hardship submitted in his case, and that the evidence establishes that his wife will suffer extreme financial, emotional and physical hardship if he is denied admission into the United States. In support of his claim, the applicant submits an affidavit from his wife and medical, and financial federal tax information for his wife.

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

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.

The record reflects that on November 30, 1994, the applicant procured admission into the United States by fraudulently or willfully misrepresenting himself as a P3 nonimmigrant (professional dance troupe dancer.) The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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's wife is a naturalized U.S. citizen. She is thus a qualifying relative for section 212(i) of the Act purposes. U.S. citizen and lawful permanent resident children are not included as qualifying relatives for section 212(i) of the Act purposes. Accordingly, hardship to the applicant's U.S.

citizen children may only be taken into account insofar as it contributes directly to hardship suffered by the applicant's wife.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. *Id.* See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The applicant indicates, through counsel, that he has been married to his wife, and has lived with her in the United States since 1998. The applicant indicates that he was the primary income earner in their family, and that his wife will suffer extreme financial hardship if is unable to support their household in the United States. The applicant asserts that he and his wife have two U.S. citizen children; that his wife suffers from severe back pain; and that it is difficult for his wife to work and support their family on her own. The applicant indicates that his wife's health and financial circumstances also make it difficult for her to visit the applicant with their family in India.

The applicant's wife [REDACTED] states in an affidavit submitted on appeal, that she is a native of India, and that she moved to the United States as a lawful permanent resident in 1997. [REDACTED] met the applicant in 1997, and they were married on August 6, 1998. [REDACTED] indicates when the applicant left the United States under an order of voluntary departure, in March 2000, he earned about \$17,000 a year. [REDACTED] states that the applicant's departure had an immediate impact on her family's standard of living, and that the family income in 2000 fell to \$12,000 a year, and she had to move in with her parents. The applicant states that her parents survive on a fixed Social Security and Social Security Disability Insurance income, and that they are unable to help her financially. She indicates further that although her parents do not work, they are unable to provide child care assistance for her two children (a son born 4/19/99 and a daughter born 3/5/05) because her mother has chronic arthritis and her father hurt his arm in a job-related incident. [REDACTED] states that she has worked in seasonal jobs sorting produce since 2001 and that she collects unemployment compensation between seasons.

[REDACTED] states that she began experiencing back and neck pain in 2004, and that she has sought medical attention and missed work because of the pain. [REDACTED] states that she suffers from other, skin-related, medical problems, and that she has been diagnosed with depression for which she takes medication. [REDACTED] indicates that her son misses his father, and she states that she took her son to visit the applicant in India in 2004. [REDACTED] became pregnant while in India, and she became physically ill and experienced back pain while there. [REDACTED] states that she fears for her own health and safety and the health and safety of her children in India.

The record contains medical documentation reflecting that [REDACTED] was diagnosed with degenerative disk disease and neck pain in September 2004, and that she has suffered a history of back pain for which she has received medication since 2004. The medical documentation also reflects that since August 2002, [REDACTED] has been treated on isolated occasions for rashes, sinusitis, gastroenteritis, allergies and headaches. [REDACTED] was also treated for depression in July 2004. The record additionally contains federal tax documentation reflecting that prior to the applicant's departure from the United States, the applicant's household earnings were about \$13,000 (in 1998), and about \$17,000 (in 1999.) [REDACTED] earnings between 2001 and 2004 were between \$3,500 and \$11,000.

The AAO has reviewed the totality of the evidence contained in the record. The AAO finds that the evidence in the record fails to establish that the applicant's wife will suffer financial, emotional or physical hardship beyond that commonly associated with removal if the applicant is denied admission into the United States.

The medical evidence in the record fails to demonstrate that [REDACTED] was treated for depression before, or after September 2004, and the record fails to establish that she sought or obtained other medical or psychological assistance for depression. The medical evidence additionally fails to establish that Ms. [REDACTED]'s back pain or other ailments have caused her to be unable to continue her work as a seasonal worker. The record also contains no evidence to indicate that [REDACTED] is unable to secure a different type of work, or fulltime work. Moreover, the household income evidence submitted on appeal varies in amount, and fails to establish that the financial situation in which [REDACTED] presently finds herself is materially different from the financial situation she was in when her husband was in the United States. Furthermore, 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.

The record also lacks any corroborative evidence to establish that [REDACTED] would suffer extreme emotional, financial or physical hardship if she moved with her family to India. The record contains no evidence to substantiate [REDACTED] concern for the health and safety of herself and her children in India. Furthermore, hardships involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, have been found not to rise to the level of extreme hardship. See *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986.) The present record reflects that [REDACTED] is familiar with the language, culture and environment in India, as she is originally from India, and she lived there until 1997. The record also lacks evidence to establish that [REDACTED]'s parents rely on her assistance in any way, and the Board held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. In the present matter, the applicant has failed to establish that his wife will suffer extreme hardship if he is denied admission into the United States. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.