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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, ILLINOIS

Date: APR 07 2008

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant, who is the wife and daughter of naturalized citizens of the United States, sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated March 6, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

Counsel claims that the applicant never gave fraudulent testimony to gain entry into the United States. He contends that when the applicant was confronted she admitted the whole story immediately. He states that the applicant never claimed to be someone else and, because she had a legally valid visa, did not need to marry in India to gain entry into the United States.

The Record of Sworn Statement dated April 28, 1996 reflects that during secondary inspection the applicant claimed to be single and traveling alone to the United States. She denied being married to [REDACTED] although they had married in India two days before on April 26, 1996. It was only after [REDACTED] was brought into the secondary inspection room did the applicant admit to her marriage to him. During secondary inspection the applicant admitted that her intention was to stay in the United States, although she entered the country on a tourist visa. Because the applicant willfully misrepresented to an immigration inspector material facts, her marital status and intention in coming to the United States, so as to gain admission into the United States, the AAO finds that she is inadmissible under section 212(a)(6)(C) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

In the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), counsel indicates that *Matter of DaSilva*, 17 I&N Dec. 288 (1979) conveys that there is no statutory requirement that extreme hardship be established. The AAO disagrees. 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.

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. Hardship to an applicant and his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's husband or mother must be established in the event that he or she joins the applicant to live in India, and in the alternative, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains a letter from the applicant's husband, income tax returns, birth certificates, a marriage certificate, and other documents.

The May 1, 1998 letter by the applicant's husband conveys that it would be an extreme hardship to his 29-day-old daughter and to his family to lose his wife. He states that no one would be available to care for his child. He states that his daughter and wife are on his medical insurance.

In his letter dated November 2, 2005, the applicant's husband states that he and the applicant have two U.S. citizen children who are two and seven years old. He states that he has been married to the applicant for 10 years, that they are a closely-knit family, and that he is concerned about raising their children without her. He states that the applicant's mother is a naturalized citizen of the United States and that she relies on the applicant because of health problems. He states that his wife is the backbone of their family, and without her they would experience emotional, physical, and financial problems. The applicant's husband states that his wife has no immediate relatives or house or wealth in India.

The record contains the naturalization certificate of the applicant's mother. It also contains the Pennsylvania Department of Public Welfare Employability Re-Assessment Form that is dated March 2005. This form conveys that the applicant's mother fractured her wrist on March 3, 2003, is permanently disabled on account of the injury, is precluded from any gainful employment, and is a candidate for social security disability or supplemental security income.

On appeal, counsel states that all of the applicant's family members live legally in the United States. He states that the applicant and her husband have two U.S. citizenship children, who are 10 and 5 years old. He states that the children, who have never been to India, speak English, have grown up here, and attend school here. He states that the applicant's husband is an engineer and they own their own house. Counsel states that the applicant's parents live in the United States and are U.S. citizens. Counsel states that *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (BIA 1979) indicates that a waiver's intent for family unification and the avoidance of the hardships of separation.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The AAO finds that the record fails to establish extreme hardship to the applicant's husband or mother in the event that he or she were to remain in the United States without the applicant.

No evidence in the record establishes that the applicant's husband or mother would experience extreme financial hardship if he or she were to remain in the United States without the applicant.

Counsel states that *Matter of Alonzo*, 17 I&N Dec. 292 (1979), indicates that the birth of a U.S. citizen child must be accorded considerable weight in adjudicating the waiver.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.")(citations omitted).

However, the fact that an applicant has children born in the United States is not sufficient, in itself, to establish extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). The court in *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), indicates that an illegal alien cannot gain a favored status merely by the birth of a citizen child, as did the court in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), which states that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt, and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's husband is very concerned about separation from his wife and her separation from their children. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's husband, if he 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 as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the applicant's husband, is unusual or beyond that which is normally to be expected upon removal. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*, *supra*.

The record reflects that the applicant's mother is permanently disabled on account of a wrist fracture. The applicant's husband states that because of his mother-in-law's health problems she relies upon his wife. However, there is no evidence in the record demonstrating that the applicant is needed to provide daily care to her mother. It is noted that the record conveys that the applicant lives in Illinois whereas her mother lives in Pennsylvania. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record is insufficient to establish that the applicant's husband or mother would experience extreme hardship if he or she were to join the applicant to live in India.

The conditions in the country where the applicant's husband or mother would live if he or she joined the applicant are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe

illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The applicant's husband conveys that he is concerned about the well-being of their children if they were to live in India. As previously stated, although hardship to the applicant's children is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's husband, as a result of his concern about the education of their children, is a relevant consideration.

U.S. courts have held that the consequences of deportation imposed on citizen children of school age must be considered in determining extreme hardship. For example, *In Re. Kao & Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the respondent's 15-year-old daughter would have difficulty transitioning to daily life in Taiwan because she had inadequate language capabilities, and after living her entire life in the United States and completely integrating into an American lifestyle, the BIA determined that uprooting the respondent's daughter at that stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the court indicated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. And, in *Prapavat vs. I.N.S.*, 638 F. 2nd 87, 89 (9th Cir. 1980), the court found the BIA abused its discretion in concluding that extreme hardship had not been shown where the aliens' five-year-old citizen daughter, who was attending school, would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

The record here establishes that the U.S. citizen children of the applicant's husband are of school age. However, no evidence has been presented to show that English is not the language of instruction in India. Thus, uprooting the children at this stage in their education and their social development to survive in an India environment would not constitute extreme hardship as found in *In Re. Kao & Lin*, *Ramos*, and *Prapavat*. The AAO therefore finds that the record fails to establish that the concern of the applicant's husband about the consequences of removal imposed on his school-age children would result in extreme hardship to him.

The applicant's husband indicates that his family would not have health insurance in India. The loss of a job along with its employee benefits is not extreme or unique economic hardship, but is a normal occurrence when an alien is deported. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). Because the health insurance of the applicant's husband is offered as employee benefit, its loss would not constitute extreme hardship.

The applicant makes no hardship claim to her mother if her mother were to join her to live in India.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.