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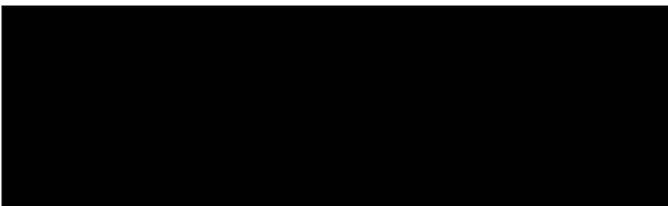
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: DEC 01 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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center, 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her U.S. citizen husband and children.

The director concluded that the applicant 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 Director*, dated August 29, 2006.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated November 28, 2006.

The record contains a brief from counsel in support of the appeal; statements from the applicant, the applicant's wife, the applicant's son, and individuals offering character references for the applicant; a copy of the applicant's marriage certificate; a copy of the naturalization certificate for the applicant's husband; copies of birth certificates for the applicant, the applicant's husband, and the applicant's sons; copies of permanent resident cards for the applicant's mother- and father-in-law; a copy of the naturalization certificate for the applicant's brother-in-law; copies of photos of the applicant and her family; copies of documents relating to the applicant's husband's business; copies of deeds to three real properties owned by the applicant and her husband; copies of tax documents for the applicant and her husband; copies of tax and business records for the applicant's husband's business; copies of school records for the applicant's son; documentation of the applicant's son's medical treatment in India; copies of the passports of the applicant and her husband; copies of documents relating to the applicant's and her husband's automobiles, and; documentation on conditions in India. 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 in approximately 1995 the applicant entered the United States using a United Kingdom passport that belonged to another individual. Thus, the applicant entered the United States by fraud, and made a willful misrepresentation of a material fact (her true identity) in order to procure entry into the United States. Accordingly, the applicant 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). The applicant does not contest her inadmissibility on appeal.

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 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 husband. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau 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 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.

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).

On appeal, counsel contends that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated November 28, 2006. Counsel provides that the applicant's husband will experience extreme hardship if he remains in the United States without the applicant, as he would be unable to assist the applicant and his two sons in India. Counsel asserts that conditions are poor in India, including crime and violence against women, dangerous working conditions, inadequate healthcare, and a weak economy and school system. Counsel contends that the applicant's husband would have anxiety about the applicant and his children facing these conditions. Counsel highlights that one of the applicant's sons had an allergic reaction to an insect bite upon a visit to India, and thus the applicant's husband would worry about whether his son would become ill again should he return.

Counsel further states that the applicant would be unable to find employment in India, thus her husband would face an economic strain in attempting to provide for two households. Counsel explains that the applicant provides bookkeeping services to her husband's business, and that he may be unable to continue without her assistance.

Counsel asserts that the applicant assists her husband with preparing a diet that he requires due to a diagnosis of diabetes. Thus counsel suggests that the applicant's husband would suffer health consequences if the applicant departs the United States.

Counsel contends that the applicant's husband would suffer extreme hardship should he return to India with the applicant. Counsel explains that the applicant's husband has extensive family ties in the United States, including his permanent resident parents, U.S. citizen brother, and his brother's U.S. citizen children, yet he has no ties in India other than his mother- and father-in-law who intend to immigrate to the United States. Counsel states that the applicant's husband has resided in the United States for a lengthy period, and he has built his business over the last 11 years. Counsel contends that the applicant's husband would be unable to liquidate his business for a sufficient sum, thus abandoning it and returning to India represents a significant economic and emotional hardship.

Counsel contends that the applicant's husband would be unable to obtain suitable medical care in India for his needs due to diabetes.

The applicant's husband explained that he has close family ties in the United States, and that his family members all reside nearby and visit and assist each other regularly. *Statement from Applicant's Husband*, dated November 21, 2006. He provided that he does not wish to be separated from his family in the United States. He explained that he has invested 18 years of effort in building his business in the United States, and that he would suffer considerable hardship should he be compelled to abandon it. He explained that he is close with the applicant and that he would worry should she return to India without him. He provided that he would have to return with her.

Upon review, the applicant has not shown that her husband will experience extreme hardship should she be prohibited from remaining in the United States. The record does not show that, should the applicant's husband depart the United States in order to maintain family unity, he would endure extreme hardship. He has family ties in the United States, and leaving them would have emotional consequences. However, the applicant has not established that her husband would experience emotional effects that are greater than those which would ordinarily be expected when a spouse relocates abroad.

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 applicant has not shown that her spouse's emotional hardship will rise to the level of extreme hardship should he relocate with her.

The applicant's husband has developed a business in the United States. The applicant has not shown that her husband is unable to hire individuals to operate his business in his absence. Nor has the applicant provided evidence to support counsel's assertion that the applicant's husband would be unable to sell his business should he choose to do so. It is noted that the applicant has college degrees in commerce and education, and

she has not shown that she is unable to find employment in India within her fields of expertise. The AAO acknowledges that her husband would experience some economic consequences as a result of relocating to India and reestablishing employment or business ventures there, yet, the applicant has not shown that she and her husband would be unable to find employment in India such that they could meet their economic needs.

The record reflects that the applicant's children are U.S. citizens acclimatized to life in the United States. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The applicant's children would endure some hardship should they relocate to India, and it is reasonable to assume that their hardship would impact the applicant's husband emotionally. Thus their hardship is considered to the extent that it affects the applicant's husband, yet the applicant has not shown that her husband's emotional difficulty regarding his children would be greater than that commonly experienced by the families of individuals deemed inadmissible.

The AAO further acknowledges the applicant's husband's concern for conditions in India. Departing the United States and relocating to India represents a change in the applicant's husband's lifestyle. Yet, the applicant has not shown that her husband or children would be unable to secure required medical care in India, or that they would suffer a reduction in their standard of living that rises to the level of extreme hardship. The applicant has not shown that her husband would experience extreme hardship should he depart the United States and return to India. Section 212(i)(1) of the Act.

The applicant has not shown that her husband would experience extreme hardship should he remain in the United States without her. The applicant's husband expressed that he shares a close bond with the applicant and that family separation would create significant emotional hardship for him. However, the applicant has not shown that her husband would experience psychological effects that can be distinguished from those commonly experienced by family members who are separated due to inadmissibility.

The applicant asserts that her husband would experience economic hardship should he remain in the United States, including the loss of the applicant's assistance in his business. The applicant has not established that her husband would be unable to operate his business without her contribution. The applicant has not shown that her husband would be unable to hire an employee to perform the bookkeeping tasks she currently performs. It is further noted that the applicant has not shown that her family lacks economic resources to support two households, or that she would be unable to secure employment in India.

The record supports that the applicant's husband would have reasonable concern for the applicant's and his children's well-being in India, which would reasonably cause him emotional difficulty. It is further understood that the applicant's husband would be compelled to endure a change in lifestyle without the applicant, as she has been an integral part of his household including assisting him with his diet and health needs. The AAO has considered these effects in assessing the aggregated hardship to the applicant's husband should he remain in the United States without the applicant. However, considered in sum, the applicant has not shown by a preponderance of the evidence that the factors of hardship to her husband rise to the level of extreme hardship.

All instances of prospective hardship to the applicant's husband have been considered separately and in aggregate. Based on the foregoing, the applicant has not shown that her husband would experience extreme

hardship should he remain in the United States, or should he return to India to maintain family unity. 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.