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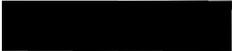
U.S. Citizenship  
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# 112



FILE:



Office: LOS ANGELES, CA

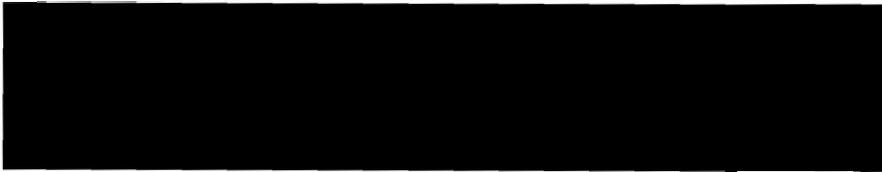
Date: MAR 24 2008

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 waiver application was denied by the District Director, Los Angeles, California. The matter 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 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen spouse. He 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 and U.S. citizen children.

The District Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his naturalized U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated December 20, 2004.

On appeal, counsel asserts that the applicant is not inadmissible under Section 212(a)(6)(C)(i) of the Act. Counsel also contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a letter of support from the Sikh Temple, Los Angeles; a psychological evaluation prepared by [REDACTED], dated November 5, 2004; a statement from the applicant's spouse; a statement from the father of the applicant's spouse; letters of employment for the applicant's spouse; W-2 Forms for the applicant; earnings statements and W-2 Forms for the applicant's spouse; tax statements for the applicant and his spouse; a letter of employment for the applicant; bank statements for the applicant and his spouse; and published country conditions reports regarding the human rights situation in India in 1993. The entire record was reviewed and considered in rendering a decision on the appeal.

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 indicates that on February 25, 1993 the applicant entered the United States as an asylum seeker. *Form I-589, Application for Asylum*. The applicant was placed into exclusion proceedings. On December 7, 1993 the Immigration Judge denied the applicant's asylum application, finding the applicant to be excludable and deportable as charged. *Decision of the Immigration Judge, Executive Office for Immigration Review, Los Angeles, California*. The applicant appealed this decision to the Board of Immigration Appeals (BIA). *See Form EOIR-26, Notice of Appeal*, dated December 15, 1993. On August 17, 1995 a complaint was filed in United States District Court charging the applicant with having violated 18 U.S.C. § 1542, False Statement in the Application for a United States Passport. *See Criminal Complaint, United States District Court, Central District of California*, undated. The record includes an order for the dismissal of this complaint signed by a United States Attorney and unsigned by a United States Magistrate Judge. *See Order for Dismissal of Magistrate Judge's Complaint, United States District Court for the Central District of California*, dated August 17, 1995. On January 12, 1998, while his appeal for asylum was pending at the BIA, the applicant married his current spouse who at the time was a lawful permanent resident. *See marriage certificate; Form I-130, Petition for Alien Relative*. On March 23, 2000, a Form I-130 was approved on behalf of the applicant. *See Form I-130, Petition for Alien Relative*. On December 8, 2000 the BIA remanded the applicant's asylum case to the Immigration Judge for further consideration. *Decision of the Board of Immigration Appeals, Executive Office for Immigration Review, Falls Church, Virginia*. According to counsel, the applicant appeared in immigration court on September 23, 2002. *Attorney's brief*. The immigration judge provided the applicant with an opportunity to file for a V visa and determined that jurisdiction over a Form I-485 Application to Adjust Status to Lawful Permanent Resident filed by an alien in exclusion proceedings lay with the District Director. *Id.* On March 5, 2004 the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status and on November 29, 2004 the applicant filed a Form I-601, Application for Waiver of Ground of Excludability. *See Forms I-485 and I-601*. On December 20, 2004 the District Director denied the applicant's Form I-601. *Decision of the District Director*, dated December 20, 2004. **The** applicant timely appealed this decision to the Administrative Appeals Office (AAO). *Form I-290B*.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel states that during the applicant's Form I-485 interview, counsel wrote out what the applicant had stated regarding the charges of making a false statement on an application for a United States passport because the applicant was unable to write in the English language. *Attorney's brief*. Counsel asserts that at no time during the interview did the officer ask the applicant if he knowingly and willfully submitted false documents to obtain a U.S. passport, nor did the applicant make such admissions. *Id.* Counsel further asserts that the officer also failed to ask the applicant whether he ever, by fraud or willfully misrepresenting a material fact, sought to procure a visa, other documentation, or admission into the United States or other benefit under the Act. *Id.* Counsel concludes that the applicant's statement does not amount to an admission that he attempted to obtain a U.S. passport by willfully and knowingly submitted a false U.S. birth certificate. *Id.* The record includes a signed statement from the applicant stating that "[s]omeone sent me to a passport agency with a U.S. birth certificate in my name and I applied for a U.S. passport." *Form I-648, Memorandum Record of Interview made in Examinations Section*, dated September 10, 2004.

The record is unclear as to whether the charges under 18 U.S.C. § 1542, False Statement in the Application for a United States Passport were dismissed, as the Order from the Magistrate Judge is signed by the United States

Attorney, yet unsigned by the Magistrate Judge (*See Order for Dismissal of Magistrate Judge's Complaint, United States District Court for the Central District of California*, dated August 17, 1995). However, the AAO notes that it is not necessary to have a conviction under 18 U.S.C. § 1542 to be found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant admitted to applying for a United States passport with a United States birth certificate in his name. *See Form I-648*. The fact that someone sent him to the passport agency with a false United States birth certificate does not insulate the applicant from liability, as the applicant himself applied for the United States passport with the false birth certificate.

The AAO notes that while aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 allow those aliens making false claims to U.S. citizenship prior to September 30, 1996, to apply for a waiver. In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3. As the applicant's false claim to U.S. citizenship was intended to provide him with documentation of U.S. citizenship and made to a U.S. Passport Examiner at the U.S. Passport Agency in Los Angeles, the AAO finds the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. As the applicant's claim to citizenship was made prior to September 30, 1996, he is eligible to apply for a waiver of inadmissibility under section 212(i) of the Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes 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 or his children 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 hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's naturalized U.S. citizen spouse if the applicant is found to be inadmissible. 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 (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.

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 was born in India and lived there until she was 17 years old. *Form G-325As, Biographic Information sheets, for the applicant's spouse*. The applicant's spouse has no family in India. *Statement from the applicant's spouse*, undated; *see also statement from the father of the applicant's spouse*, undated. The applicant's spouse completed high school and college in the United States. *Statement from the applicant's spouse*, undated. She is employed as a medical assistant. *Id.*; *See also employment letter for the applicant's spouse*, dated September 9, 2004. At the time of her statement, the applicant's spouse was pregnant. *Id.* She notes that the applicant has been the primary financial support for their family and that she has been working to help out until their second child is born. *Id.* Once they have their second child, she will be staying at home to care for their two children. *Id.* The applicant will continue to work full-time to support their family. *Id.* The applicant believes that he will be unable to support his family's needs once he is in India. *Psychological Evaluation*, [REDACTED], dated November 5, 2004. He notes that he will have to work as a farmer and it will hardly pay enough to meet his own needs. *Id.* According to the applicant's spouse, it is hard to find work in India and for females it is almost impossible. *Id.* While the AAO acknowledges the statements made by the applicant and his spouse, it notes that there is nothing in the record, such as recently published country conditions reports, to support the applicant's assertions. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 applicant has experience working as a taxi driver, delivery person, and cook at an Indian restaurant in the United States. *Form G-325A, Biographic Information sheets, for the applicant*. The record fails to show that the applicant will be unable to obtain similar positions in India. Furthermore, the record does not show what income level is necessary for a family of four to live in India. The parents and sister of the applicant's spouse have provided her with tremendous support throughout her marriage and they have a strong bond with her daughter. *Statement from the applicant's spouse*, undated. The applicant's spouse cannot imagine not being able to see them regularly or that her daughter will be separated from them. *Id.* While the AAO acknowledges the importance of family separation, particularly because this case resides in the 9<sup>th</sup> Circuit (*See Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998)), it notes that the applicant's parents continue to live in India, and that the applicant grew up in a loving home environment. *Psychological Evaluation*, [REDACTED], dated November 5, 2004. There is nothing in the record to show that the applicant's spouse will not receive support, both emotional and financial, from her in-laws in India. Additionally, the record fails to establish that the parents and sister of the applicant's spouse are financially unable to periodically visit her in 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 previously noted, the parents and sister of the applicant's spouse live in the United States. *Form G-325A, Biographic Information sheets, for the applicant's spouse*; *Statement from the applicant's spouse*, undated. There is nothing in the record to show that the applicant will be unable to contribute to the financial well-being of his family from a location other than the United States. The

applicant's spouse states that to separate from her husband and keep him from his children will destroy her. *Statement from the applicant's spouse*, undated. He is a loving husband and father and she cannot imagine living life without him. *Id.* According to the submitted psychological evaluation, the applicant's spouse is experiencing the typical symptoms of major depression. *Psychological Evaluation*, [REDACTED] M.F.C.C., Ph.D., dated November 5, 2004. Although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation is based on two interviews occurring one month apart. As such, the conclusions reached in the submitted evaluation do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the therapist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, the record fails to reflect that the applicant's spouse has established an ongoing relationship with a mental health professional or receives any other type of treatment for her depression. While family separation is given considerable weight in the 9<sup>th</sup> Circuit (*See Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998)), the AAO notes that the applicant's spouse has several family members in the United States. *Form G-325A, Biographic Information sheets, for the applicant's spouse; Statement from the applicant's spouse*, undated.

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, the record does not distinguish her situation, if she remains in the United States, from that of individuals separated as a result of removal. Accordingly, it does not demonstrate that the hardship she will face rises to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relatives caused by the applicant's inadmissibility to 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.