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**U.S. Citizenship
and Immigration
Services**

H 2

[REDACTED]

FILE:

[REDACTED]

Office: NEW DELHI, INDIA

Date: NOV 03 2008

IN RE:

[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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Office-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 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 attempting to procure a U.S. visa by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and she is seeking 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.

The office-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, at 6, dated June 22, 2006.

On appeal, counsel asserts the decision contains factual and legal errors and this resulted in an improper decision. *Form I-290B*, received July 22, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statements, a physician's statement for the applicant's son and medical records for the applicant's spouse's parents. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant applied for an H-1B nonimmigrant visa with fraudulent supporting documents in 1998. As a result of this prior misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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.

A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. The AAO notes that hardship to an applicant's child is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship

may affect the qualifying relative. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in India or in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in India. In regard to family ties, counsel states that the applicant's spouse's parents and brothers reside in the United States. *I-601 Brief*, at 8, dated September 12, 2005. Counsel states that the applicant's spouse's parents are U.S. citizens, they reside with the applicant's spouse, he assists them with their personal needs and their business, both of his parents have chronic medical conditions and he cannot reside in India due to his family business demands and his parent's needs. *Id.* at 3, dated September 12, 2005. The record reflects that the applicant's mother-in-law is a cardiac patient and has hypertension and diabetes. *Letter from [REDACTED]*, dated January 6, 2005. The applicant's father-in-law states that his wife is disabled, he has medical problems and the applicant's spouse helps them at home and with their business. *Applicant's Father-in-Law's Statement*, at 1, dated September 2, 2005. The applicant's father-in-law states that his and his son's stores suffer when his son is not around and his family would lose almost \$200,000 if they could not keep and run their businesses. *Id.* at 3. Counsel states that the applicant's spouse and his father own 7-Eleven franchises and his absence while visiting the applicant created a breach and potential termination of the franchise agreement. *Id.* Counsel states that the applicant's father-in-law depends on the applicant's spouse to assist with his store as he cannot handle it alone due to his and his spouse's health problems. *Id.* at 5. Counsel states that in the absence of the applicant's spouse, the family cannot manage his father's store and take care of his mother. *Id.* at 6. Counsel states that the applicant's spouse helps care for his mother who has hypertension, diabetes and cardiac disease. *Id.* The applicant's spouse states that he is tied to the United States through his parents, the businesses owned and run by his family, the investments made in the businesses, his family depends upon him to run the businesses and the businesses support himself and his family. *Applicant's Spouse's Statement*, at 1-2, dated September 2, 2005. The applicant's spouse states that he must personally supervise his business, as it includes the sale of liquor, or he will be unable to keep it. *Id.* at 3. The record includes evidence that supports this claim. *Rules and Regulations of Hartford County Liquor Control Board*.

Counsel states that abandoning and devastating one's parents in their declining years is extreme in any culture and even more so in the Indian culture, which is the backdrop of this case. *Brief in Support of Appeal*, at 3, undated. Counsel states that the applicant's spouse has cultural obligations to care for his aging parents and failure to do so is unthinkable. *Id.* Counsel states that abandoning aging parents goes beyond a loss of companionship and that the applicant's spouse is emotionally, morally, ethically and culturally bound to care for his parents. *Id.* at 4. Based on the totality of these factors, the AAO finds that the applicant's spouse would suffer extreme hardship if he resided in India permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that the applicant's spouse is separated from the applicant and his son. *I-601 Brief*, at 9. Counsel states that when the applicant's son came to the United States to spend time with the applicant's spouse, he experienced separation anxiety due to being removed from the care of his mother. *I-601 Brief*, at 6-7. The record reflects that the applicant's son exhibited symptoms associated with separation anxiety when he was in the United States and it would be best for him to be with both his parents. *Letter from [REDACTED]*, dated July 13, 2005. However, the record does not include evidence that the applicant's son is experiencing problems while residing with the applicant in India and how these problems are affecting the applicant's spouse. The AAO also notes that the record indicates that the applicant's son was previously diagnosed as hyperactive and that he was scheduled for an evaluation at a medical facility in the United States. *Letter from [REDACTED], Kennedy Krieger Institute*, dated November 24, 2003. The record again does not document the results of this medical evaluation and how his son's hyperactivity affects the applicant's spouse.

The applicant's father-in-law states that he suffers from high blood pressure and hypertension, his spouse has a cardiac condition, his son is showing signs of depression due to separation from the applicant, and the applicant is being treated for depression. *Letter from the Applicant's Father-in-Law*, undated. The applicant's spouse states that the applicant is receiving treatment for depression, her depression is increasingly worse and she is not capable of providing adequate care for their son. *Applicant's Spouse's Statement*, at 1, undated. The record reflects that the applicant was under treatment for depressive disorder in 2002. *Letter from [REDACTED]* dated December 5, 2002. The AAO notes that the doctor's letter is nearly six years old. The record does not include evidence that the applicant continues to experience mental health or other medical problems and how those problems are affecting the applicant's spouse.

The applicant's spouse states that being apart from his wife and son, worrying about their welfare every day, traveling between the United States and India, and caring and worrying about his parents has made him very depressed and he is often reduced to tears and misses work. *Applicant's Spouse's Statement*, at 1. Counsel states that the applicant has taken three trips to India totaling 233 days, he has suffered economic loss due to his trips and the trips are necessary due to his child's irritable hyperactive disease and his wife needs his assistance raising their child. *Counsel's Letter*, at 1, dated November 13, 2003. The record does not include substantiating evidence from a relevant health care professional that the applicant's spouse is experiencing depression or any other emotional problems.

Counsel states that the applicant's spouse will suffer from continued separation and the difficulties of caring for his parents and family business alone. *Brief in Support of Appeal*, at 3. Counsel states that the applicant's spouse's obligation to care for the applicant and their child is fundamentally rooted in his culture, moral

values and his heart. *Id.* at 4-5. The AAO acknowledges that the applicant's spouse is experiencing difficulty without the applicant. However, it finds that insufficient evidence has been submitted to establish that the applicant's spouse would experience extreme hardship if he remains in the United States without the applicant.

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. Moreover, the AAO notes that 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 AAO notes that a review of the record fails to establish the existence of extreme hardship to the applicant's spouse 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 she merits a waiver as a matter of discretion.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.