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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: NEW DELHI, INDIA

Date: APR 06 2009

IN RE:

Applicant:

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 Officer-in-Charge (OIC) , New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, [REDACTED], 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 sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to join his spouse, who is naturalized citizen of the United States. The OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated October 11, 2006. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility, which is under section 212(a)(6)(C) of the Act, and which provides, in pertinent part:

- (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 chapter is inadmissible.

The record reflects that the applicant sought to obtain a CR-1 visa by submitting to the American Embassy in New Delhi a passport, birth certificate, and marriage certificate in the name [REDACTED]. In light of his misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel states, in part, that case law indicates that family separation is the most important hardship factor. He states that the applicant's wife has serious health problems for which she would not receive the same level of care in India which she receives in the United States, that wages in India are low, that the applicant's spouse would have limited educational opportunities in India and would have difficulty adjusting to life there, and that she has experienced emotional hardship as a result of separation from the applicant, whom she has a close emotional bond. Counsel asserts that the OIC failed to consider the cumulative effect of the hardship factors.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act, which the AAO will now address. Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's spouse who is a naturalized citizen of the United States. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Extreme hardship to the applicant's qualifying relative must be established in the event that he or she remains in the United States without the applicant, and alternatively, if he or she joins him to live in India. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"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.

Counsel is correct in that the hardship factors must be considered in their totality. 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).

In support of the waiver application, the record contains, in addition to other documents, two psychological evaluations of the applicant's spouse, medical records of the applicant's spouse, a

letter by the applicant's spouse's treating physician, a document about the survival of children in India, and a list of the applicant's and her husband's family members in the United States.

The psychological evaluation of the applicant's wife by [REDACTED] indicates that the applicant's wife "cannot work in the United States due to her illnesses and needs her husband for her financial and physical support." He describes the applicant's spouse's health problems such as her right kidney transplant and removal of her left kidney, her diagnosis of the auto immune disease Wegner's Granumatolosis, diabetes, urinary track infections, hypertension, and hypothyroidism. He indicates that the applicant's spouse becomes sick whenever she is in India. [REDACTED] states that the applicant's spouse presents with Axis I: Major Depressive Disorder, NOS, R/O Posttraumatic Stress Disorder; and Axis IV: Psychosocial Issues of Immigration Case and family's health and safety. [REDACTED] conveys that the applicant is a farmer in India, who grew up and continues to live in poverty. He states that the applicant and his spouse married in India on February 15, 2005.

The declaration by [REDACTED], a licensed clinical social worker, describes the applicant's spouse's health problems, and she states that the applicant will be available to share in his wife's hardships if he were in the United States.

The letter by [REDACTED] indicates that the applicant's wife was diagnosed with Wegner's Granulomatosis in 1997, that she was on dialysis for nine months and underwent a kidney transplant in 2001, that she had an urinary tract infection and fever while in India in 2005, that she had been advised not to remain in India too long because of her immunosuppressive medicine, and that she had her left kidney removed in 2006 and was advised not to travel to India anymore.

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

The conditions in the country where the applicant's qualifying relative 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).

Based on the evidence in the record, reflecting the serious health problems of the applicant's wife and the letter by her physician indicating that she should refrain from traveling to India, the AAO finds that the applicant's spouse would experience extreme hardship if she were to accompany her husband to live in India.

With regard to separation from his spouse, the record reflects that the applicant and his spouse have never lived together and the applicant has provided nothing to demonstrate extreme hardship to his wife if they remain separated. The psychological evaluation by [REDACTED] is based on a single interview and the conclusions reached in the evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a

psychologist, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship. There are no financial documents showing that the applicant's wife would experience extreme hardship if she remained separated from him. The AAO, therefore, finds that the applicant's wife would not experience extreme hardship if she were to remain separated from her husband.

The applicant has established extreme hardship to his wife if she were to join him to live in India; however, he has not established extreme hardship to her if she remained in the United States without him. Thus, extreme hardship to a qualifying family member for purposes of relief under 212(i) the Act, 8 U.S.C. § 1182(i), has not been established.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval 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. The application is denied.