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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

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

H2

FILE:

Office: NEW DELHI Date:

APR 24 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); Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal.¹ 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 was further found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act in order to enter the United States and reside with his U.S. citizen wife and daughter.

The officer-in-charge 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 Officer-in-Charge*, dated August 1, 2006.

On appeal, counsel for the applicant contends that the applicant is not inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, as he did not accrue unlawful presence in the United States. *Brief from Counsel*, dated August 28, 2006. Counsel contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from entering the United States. *Id.*

The record contains a brief from counsel in support of the appeal; a psychological evaluation of the applicant's wife; copies of permanent resident cards for the applicant's wife's alleged relatives; documentation in connection with the applicant's prior proceedings in Immigration Court and his resulting deportation; copies of medical documents for the applicant's wife; a letter from a cultural center in support of the application; copies of bills, tax, and financial documents for the applicant and his wife; a copy of the applicant's marriage certificate; documentation of the applicant's wife's employment and income; a copy of the applicant's daughter's birth certificate; a copy of the applicant's passport, and; documents in connection with the applicant's prior applications for asylum. 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.

¹ Counsel indicates that the applicant is filing the present Form I-290B to appeal the denial of his Form I-601 application and Form I-212 application. However, the Form I-601 and Form I-212 applications are two separate matters and were denied in two separate decisions, thus they cannot be appealed with a single Form I-290B filing. Therefore, the present form I-290B appeal is treated as an appeal of the applicant's Form I-601 application only.

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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(iii) Exceptions.-

(II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant attempted to enter the United States on April 4, 1993 using a false identity and was placed into proceedings in Immigration Court due to not having proper entry documents. The applicant claimed a false identity and applied for asylum defensively on November 7, 1994 using the false identity he claimed upon his attempted entry. On April 4, 1995, his application for asylum was denied and he was ordered removed by an Immigration Judge. On August 20, 1996, the Board of Immigration Appeals (BIA) affirmed the denial of the applicant's application for asylum. On October 17, 1995, the applicant filed an affirmative asylum application under his true name, yet he failed to reveal that he was subject to a removal order, or that he previously applied for asylum under a fraudulent identity. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act 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. Counsel suggests that the applicant was not found in violation of section 212(a)(6)(C)(i) of the Act prior to the present proceeding. However, U.S. Citizenship and Immigration Services (USCIS) is not precluded from finding an applicant inadmissible when facts support such a finding, regardless of whether such a finding was made in prior proceedings. The applicant has not shown that he was erroneously deemed inadmissible under section 212(a)(6)(C)(i) of the Act on appeal.

As observed by the officer-in-charge, the applicant indicated on Form G-325A submitted with the Form I-130 petition submitted on his behalf, that he worked as a self-employed cab driver from 1995 until "present," deemed to be on or about July 17, 2003, the date the Form I-130 petition was filed. The applicant submitted a second Form G-325A with the present Form I-601 application in which he indicated that he was employed with Yellow Cab as a taxi driver from May 1999 until July 2004. The record does not reflect that the applicant received employment authorization from June 9, 1997 to February 21, 1999.² As the applicant worked without authorization, the officer-in-charge found that the applicant is not eligible for the exception to unlawful presence afforded to applicants for asylum under section 212(a)(9)(B)(iii)(II) of the Act.

Counsel asserts that the applicant was in a legal status from November 1995 until July 12, 2004 when he was removed from the United States. Counsel does not address whether the applicant worked without authorization or whether he is eligible for the exception in section 212(a)(9)(B)(iii)(II) of the Act.

The applicant was granted asylum on November 30, 1995. As counsel correctly notes, the applicant held that status until it was revoked, effective July 12, 2004, the date the applicant was removed. The unlawful presence provisions in the Act took effect on April 1, 1997, thus the applicant did not accrue

² It is noted that the applicant was issued Employment Authorization Documents valid from June 9, 1995 to June 8, 1996, and from June 9, 1996 until June 8, 1997. Yet, he applied for and received these documents based on his fraudulent asylum application and using a fraudulent identity. The applicant filed these fraudulent applications for employment authorization after he had filed a new asylum application under his true name with the San Francisco Asylum Office.

unlawful presence before that date. However, as the applicant worked without authorization from June 1997 until February 1999, he is not eligible for the exception to unlawful presence afforded to applicants for asylum under section 212(a)(9)(B)(iii)(II) of the Act. Accordingly, he accrued over one year of unlawful presence, and he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure.

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. A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is also dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon deportation is not a basis for a waiver under sections 212(i) or 212(a)(9)(B)(v) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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 wife will suffer extreme hardship if the applicant is prohibited from entering the United States. *Brief from Counsel* at 4. Counsel asserts that all of the applicant's wife's family members are in the United States, including her parents and four siblings, and that she does not have ties to India except for the applicant. *Id.* Counsel states that the applicant's wife's mother resides with her, and that she is experiencing health problems associated with old age and high blood pressure. *Id.* Counsel references the included psychological evaluation addressing the applicant's wife, and indicates that she has a long history of depressive issues beginning in 1995. *Id.*

Counsel suggests that the applicant's wife will experience economic hardship, as she and the applicant purchased a home and have associated expenses. *Id.* at 4-5. Counsel states that the applicant's wife is concerned for her safety. *Id.* at 5. Counsel contends that the applicant's wife is having difficulty caring for herself and the applicant's daughter regarding food, shelter, and clothing. *Id.*

Counsel notes that the applicant's wife has technical skills which allowed her to obtain employment as an assistant designer, yet counsel asserts that these skills are not transferable to India. *Id.* Counsel suggests that the loss of the applicant's wife's employment should she relocate to India would create emotional hardship as well as economic difficulty. *Id.*

Counsel states that the applicant's wife has concern for her daughter growing up in the village where the applicant resides due to a lack of educational opportunities for females. *Id.*

Counsel explains that the applicant's wife received fertility treatments in order to have their daughter, and that such treatments would not be available to them should they choose to have more children in India. *Id.* at 5-6.

The applicant submitted a psychological evaluation of his wife and daughter, created by [REDACTED] a licensed clinical social worker. [REDACTED] states that the applicant provides essential physical, emotional, "instrumental," and financial support for the applicant's wife and daughter. *Report from [REDACTED] August 24, 2006.* [REDACTED] states that the applicant's wife resides with her mother and father, she is instrumental in her mother's care and health, and that her parents would be devastated if she departs the United States to join the applicant. *Id.* at 2. [REDACTED] states that the applicant's wife has a history of serious mental health problems, she has been unable to successfully continue in her career, and she fears she will lose her home due to the applicant's absence. *Id.*

[REDACTED] asserts that the applicant is from a different culture and region of India than the applicant's wife, and the applicant's wife would be unable to live a meaningful and dignified life there. *Id.* [REDACTED] provides that the applicant's wife fears the loss of her healthcare, education, employment, family, friends, community contacts, and social services should she reside in India. *Id.* at 3. [REDACTED] lists numerous alleged relatives of the applicant's wife who reside in the United States. *Id.* at 3-6.

[REDACTED] describes the applicant's wife's history. *Id.* at 7-9. [REDACTED] states that the applicant's father travels to India often, and thus the applicant has taken on the role of caregiver for her mother. *Id.* at 8. [REDACTED] recounts a statement from the applicant's mother in which she indicated that the applicant's wife and daughter are enduring emotional hardship due to the applicant's absence. *Id.* at 9. [REDACTED] recounts statements from the sister of the applicant's wife, including comments that the applicant's wife is suffering significant emotional hardship due to separation from the applicant. *Id.* at 10.

[REDACTED] states that in October 1995 the applicant's wife received psychiatric care and was prescribed an antidepressant due to depression and anxiety. *Id.* at 12. [REDACTED] posits that the

applicant's wife has experienced depression and anxiety for several years. *Id.* states that the applicant's wife suffers from panic attacks. *Id.* at 13.

indicates that the applicant and the applicant's wife share a close bond. *Id.* at 22. provides that the applicant's wife stated that she is suffering emotionally since the applicant departed, and that she has been jobless with no economic resources except their savings. *Id.* at 14-15. The applicant's wife explained that the applicant lives in a remote village 45 minutes from the city, and that her daughter would not have "the best" life there. *Id.* at 15. She noted that she is looked down upon by the Indian community in which she resides in the United States due to being a woman living alone. *Id.*

The applicant provided a brief letter from who stated that the applicant received treatment at his center in September 2005 for stress and depression, and that she received anti-depressant medication and supportive psychotherapy. *Letter from* October 27, 2005.

The applicant provided a letter from Milton's of New York, Inc. that reports that the applicant's wife was working there as of the date of the letter, November 23, 2005. *Letter from Milton's of New York, Inc.*, dated November 23, 2005. The applicant submitted copies of checks written to his wife from Milton's of New York, Inc. on a weekly basis for \$280.

The applicant provided a letter from that asserts that his daughter will fail to thrive and develop appropriately without his presence. *Letter from Queens Pediatric Care, L.L.P.*, dated May 22, 2006.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from entering the United States. Counsel asserts that the applicant's wife will experience extreme hardship if the present waiver application is denied. The record contains references to the applicant's wife's emotional state and treatment she has received. It is noted that attention is placed primarily on the applicant's wife's separation from the applicant as the cause of her present emotional hardship, including the emotional consequences of economic challenges, stigmatization in her community in the United States due to being a woman residing alone, the challenge of caring for her daughter without the applicant, and the emotional aspects of separation itself. The AAO acknowledges that family separation can create significant psychological hardship, and that the applicant's wife has been treated for depression in October 1995 and September 2005. However, the applicant has not shown that his wife's emotional hardship would remain significant should she join him in India to maintain family unity.

The AAO has examined the report from in detail. While the report is helpful for a background of the applicant and his family, it does not represent an ongoing relationship with a mental health professional, or treatment for a mental health condition. indicated that he generated his report based on a single interview with the applicant's family, which limits its evidentiary weight.

██████████ makes reference to issues which have no supporting documentation in the record and no indication of the basis on which he forms his opinion. For example, ██████████ states that the applicant's wife would have difficulty residing in India where the applicant resides, yet he does not reference any specific regions or cultural practices, or state a basis for his expertise in commenting on such country conditions. The applicant has not submitted any evidence or documentation to show conditions in India, or to otherwise support that his wife or daughter would have challenges residing there. Further, ██████████ provides a list of alleged relatives of the applicant's wife who reside in the United States, including their immigration status. Yet, the record contains no documentation to support that the majority of the referenced individuals are in fact relatives of the applicant's wife, such as birth certificates or affidavits. ██████████ references economic challenges of the applicant's wife, yet he does not reference any financial documentation that formed the basis of his statements. ██████████ noted that the applicant's wife's mother has health issues, yet he did not reference, and the applicant did not provide, any medical documentation for the applicant's wife's mother.

Thus, while the report from ██████████ identifies emotional and economic hardships to the applicant's wife, it does not reflect that the applicant's wife is experiencing consequences that are distinguishable from those commonly experienced by an individual whose spouse is deemed inadmissible.

The record contains references to economic hardship to the applicant's wife. However, the applicant has not clearly stated or shown whether his wife works or the amount of her resources. ██████████ provided that the applicant's wife indicated that she had been unemployed and was subsisting on savings, yet counsel claims that the applicant's wife would endure the loss of her job should she relocate to India. The record contains a letter and copies of payments to the applicant's wife to show that she was employed as of November 2005. The AAO is unable to clearly determine the level of income the applicant's wife current receives. It is noted that the applicant's wife's mother resides with her. The applicant's wife's father travels to India often, which suggests that he also resides in the United States during portions of the year, possibly with the applicant's wife. The applicant has not indicated whether his wife's parents assist her with their household needs. As the applicant's wife's father travels to India, it is evident that the applicant's wife's parents have access to economic resources. The applicant has not stated whether he works in India, or whether his income or needs affect his wife's status in the United States. Accordingly, the applicant has not shown by a preponderance of the evidence that his wife is experiencing significant economic hardship due to his absence.

The applicant has not shown that his wife would experience extreme hardship should she return to India to maintain family unity. As noted above, the record emphasizes family separation as the primary source of the applicant's wife's emotional hardship. Should she join the applicant in India, she would not be faced with separation.

The record suggests that the applicant's wife would experience difficulty securing employment in India, yet the applicant has not specifically described what employment his wife would seek, or submitted reports to support that such work is unavailable. The applicant and his wife own a home in the United States. The applicant has not shown whether the home could be sold to help meet his wife's financial needs in making a transition abroad.

The applicant's wife's mother resides with her in the United States, and counsel and [REDACTED] purport that she relies on the applicant's wife for care. Yet, the applicant has not provided medical documentation for the applicant's mother to show that she needs assistance. It is noted that the applicant's wife's father travels to India frequently, which suggests that he and the applicant's wife's mother could reside in India should they wish to maintain unity with the applicant's wife. [REDACTED] asserts that the applicant's wife has numerous relatives in the United States. Yet, 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 acknowledges that the applicant's wife wishes for her daughter to reside in the United States. Yet, the applicant has not shown that his daughter would suffer hardship that elevates his wife's suffering to extreme hardship should she relocate to India.

The applicant's wife is a native and citizen of India. [REDACTED] contends that the applicant's wife and the applicant are from separate cultures and regions, which would create hardship for the applicant's wife should she attempt to reside in the applicant's native region. Yet, the applicant has not identified where he and his wife are from, or specifically explained why he and his wife would be unable to reside in a location in India that meets both of their cultural needs. While the AAO acknowledges that India is a multicultural country with diverse customs, it is evident that the applicant's wife's status as a native of India would alleviate the hardship she would experience if compelled to adapt to a completely unfamiliar country and language.

The applicant applied for asylum on two occasions. Yet, on appeal he makes no claims that he has encountered difficulty in India that may serve to create hardship for his wife should she join him there.

All elements of hardship to the applicant's wife have been considered individually, and in aggregate. Based on the foregoing, the applicant has not provided sufficient documentation to show that his wife will experience extreme hardship should she join him in India to maintain family unity, or should she remain in the United States without him. Accordingly, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his wife. Section 212(i) of the Act. 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 sections 212(i) and 212(a)(9)(B)(v) 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.