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

Office: PITTSBURGH, PA

Date: APR 29 2009

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.

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 Field Office Director, Pittsburgh, Pennsylvania, 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant's spouse and two children are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had 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 Field Office Director*, at 4, dated December 18, 2007.

On appeal, counsel asserts that the applicant did not engage in fraud or misrepresentation, she is not excludable on this basis, and she established extreme hardship to her spouse. *Form I-290B*, at 2, received January 16, 2008.

The record includes, but is not limited to, counsel's brief on appeal, prior counsel's motion to reopen the denial of the applicant's Form I-485, the applicant's spouse's statement, the applicant's statement, evidence of the applicant's spouse's employment, evidence of the applicant's older child's activities and photographs of the applicant's family. The entire record was reviewed and considered in arriving at a decision on the appeal.

The applicant states that on June 22, 1996 she was admitted to the United States by an immigration officer in Chicago. *Applicant's Statement*, dated October 11, 2005. The record does not include evidence of a visa in the applicant's passport, a Form I-94, Arrival-Departure Card, or of an entry stamp in the applicant's passport. The applicant states that this was her first time away from her village, she gave her passport to her agent, the agent talked with the immigration officer, she spoke no English, she did not understand the discussion, and no questions were being directed at her. *Id.* Counsel states that the applicant did not commit fraud, shut off a line of inquiry, or willfully misrepresent herself. *Brief in Support of Appeal*, at 4. Counsel also states that the applicant was never personally inspected by the inspections officer, and the applicant's testimony and documents prove that she was not inspected. *Id.* at 7-8. While the AAO notes counsel's claims, it also observes that the record contains the applicant's statement indicating that she entered the United States through the Chicago port-of-entry in 1996. In that the copy of the applicant's passport in the record fails to show this admission or to contain a visa to enter the United States, the record does not establish that the applicant used her own passport to enter the United States at Chicago. Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is on the applicant to demonstrate that she is admissible to the United States. As the record fails to establish that the applicant did not procure admission to the United States through fraud or willful misrepresentation in 1996, she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and must seek a waiver.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or her children 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 (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. 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 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 the motion filed in response to the district director's denial of the applicant's Form I-485, prior counsel states that the applicant's spouse is the manager of two gas stations, he runs a cell phone store, he provides his family with an above average quality of life, he would have to start from scratch in India as he does not have post-high school education, his wages

in India would be significantly less, he could not provide even a modest life in India, and his loss of income would prevent his children from being able to participate in the same beneficial activities as in the United States. *Motion to Reopen*, at 8-9, dated April 26, 2007. Counsel states that the applicant's children would also suffer hardship as the United States is the only home they have ever known and they will be robbed of the opportunities and education they would have in the United States. *Id.* at 10. The record includes evidence of the applicant's employment and of his older child's activities in the United States. However, it does not provide documentary evidence, e.g., published country conditions reports on the Indian economy, to support the claims of financial hardship made by prior counsel and the applicant's spouse. The AAO notes that without documentary evidence to support these claims, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentation will not meet the applicant's burden of proof in 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 record also fails to indicate whether relocation would result in emotional or other hardship to the applicant's spouse or to document that hardship. While the AAO notes prior counsel's claim of hardship to the applicant's children, it observes that they are not qualifying relatives for the purposes of this proceeding and the record fails to demonstrate how the hardship they might experience on relocation would affect their father, the only qualifying relative. While the applicant's spouse may encounter difficulties in India, the applicant has provided insufficient evidence that he would suffer extreme hardship as a result of relocating to India.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. In the motion filed in response to the district director's denial of the applicant's Form I-485, prior counsel states that the applicant's spouse would suffer extreme hardship due to career disruption, financial hardship and separation from his family. *Motion to Reopen*, at 7. Counsel states that the applicant's older child is in fourth grade, the younger child is attending a Montessori school, and the applicant is the primary caretaker of the children. *Id.* at 7-8. Counsel states that the applicant's spouse would not be able to remain employed in his current position and raise his two children, the children would suffer greatly as they are losing the most important relationship in their lives, and they will almost never see their mother. *Id.* at 9-10. Counsel also states that the applicant's spouse would suffer extreme hardship if his children relocate to India without him, as his life revolves around his family and his family has a strong and loving bond. *Id.* at 10. The applicant's spouse states that both of his children are happy and well-behaved, the applicant is a wonderful mother who instills great morals and values in them, he has worked hard to obtain his position, and he would not be qualified to step into a new position which would provide him extra time to be with his children. *Applicant's Spouse's Statement*, at 1-2, dated April 26, 2007. Although the AAO notes the claims of hardship to the applicant's spouse, it again does not find the record to provide the documentary evidence to support them. The applicant has provided no documentation to establish the financial impact of her removal from the United States on her spouse. Neither does the record demonstrate that the applicant's spouse would be unable to remain in his

current position if she were removed to India. While the AAO acknowledges that the applicant's spouse would experience emotional hardship if he were separated from the applicant and their children, the record also fails to document, e.g., an evaluation prepared by a licensed mental health professional, the nature and extent of the emotional impact on him. Based on the record, the AAO finds that the applicant has not provided sufficient evidence to establish that her spouse would suffer extreme hardship if he were to remain in the United States without her.

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.

A review of the documentation in 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 he 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.