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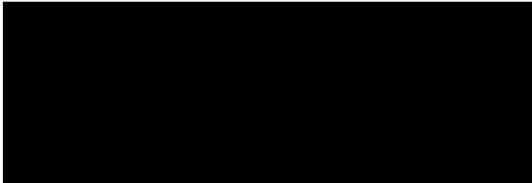
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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AUG 12 2009

FILE: [REDACTED]

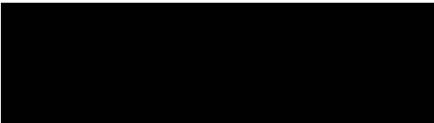
Office: NEW DELHI, INDIA

Date:

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v)

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, 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. 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. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Officer in Charge concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 24, 2007.

On appeal, counsel for the applicant states that the Officer in Charge failed to fully consider the evidence presented, and that the applicant's spouse would suffer extreme hardship if the applicant's waiver is denied.

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

(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.

....

(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 [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 indicates that the applicant entered the United States without inspection in September 1998 and remained until he departed voluntarily on June 6, 2006. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

The AAO notes that a claim of extreme hardship to a qualifying relative should not only address the impacts of relocation with the applicant, but those of separation as well, since a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record includes, but is not limited to, counsel’s brief; statements from the applicant and the applicant’s spouse’s; statements from family members of the applicant’s spouse; pictures of the applicant and his spouse; and a psychological evaluation of the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel asserts that the applicant’s spouse would suffer extreme hardship if she chose to relocate to India with the applicant. He states that she would be unable to find employment, unable to receive medical treatment for her health conditions, is unable to speak the language and would be ostracized socially based on her status as a female. While such assertions, if supported by evidence, would normally carry weight in these proceedings, the AAO notes that the record lacks any evidence to

document the contentions of counsel. There are no country conditions reports or other documentary evidence that establish that the applicant's spouse would be unable to find employment, that she would be unable to have any medical conditions treated, that English is not widely spoken in the region where her husband resides, or that women are unable to function in society as asserted by counsel. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Likewise, the applicant's spouse's assertions regarding employability, availability of health care and social isolation are unsupported by the record, and are thus insufficient to establish that she would suffer extreme hardship if she relocated to India with the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). While the AAO accepts that relocating to India would require adjustment on the part of the applicant's spouse, the record does not establish that social and employment conditions in India would result in extreme hardship to her.

Counsel contends that relocation to India would exacerbate the applicant's spouse's asthma. The applicant's spouse asserts that she has been diagnosed with arthritis in her feet, and that she may require medication or surgery. These assertions are not supported by any primary evidence such as a medical diagnosis by a doctor or other medical documentation. The applicant's spouse states that relocating to India would separate her from her parents and other family members residing in the United States, and would constitute an extreme emotional hardship for her. While the AAO acknowledges that separation from her U.S. family would result in emotional hardship to the applicant's spouse, the record fails to provide evidence that distinguishes her hardship from that experienced by other individuals who have chosen to relocate with their spouses.

As noted above, a determination of extreme hardship also involves examining the impacts on a qualifying relative if he or she chooses to remain in the United States, as a qualifying relative is not required to depart the United States as a result of an applicant's exclusion.

Counsel asserts that the applicant's spouse suffers from depression and anxiety at the prospect of being separated from the applicant, and that her family has a history of mental illness. The applicant's spouse, one of the applicant's spouse's sisters, and [REDACTED], a licensed Clinical Social Worker, additionally assert that the applicant's spouse's family has a history of mental illness. [REDACTED] refers to the applicant's spouse's father having killed himself and her sister as having attempted suicide. However, the record does not contain any type of corroborating evidence, including medical statements regarding the mental illness experienced by the applicant's spouse or her sister. [REDACTED] diagnoses the applicant's spouse with depression and states that, if her stress continues, it could place her at higher risk of suicide. Although the input of any mental health professional is respected and valuable, the AAO notes that the narrative basis of [REDACTED] conclusions derives solely from statements made by the applicant's spouse, and does not reference any review of any actual prior medical records for the applicant's spouse. Further, the submitted evaluation is based on only two interviews, totaling three hours, with the applicant's spouse. Therefore, the conclusions reached in the submitted evaluation, being based on such a limited

relationship do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional. This significantly weakens the evidentiary value of findings to a determination of extreme hardship. Accordingly, [REDACTED]'s evaluation is not sufficiently probative to establish that the applicant's spouse would suffer an emotional impact that rises above that normally experienced by the relatives of excluded aliens.

Counsel also asserts that the applicant will suffer an extreme financial hardship if the applicant is excluded. As with other assertions made in the record, the assertions of financial hardship are not supported by primary evidence. While the applicant's spouse and family members state that she will suffer financial hardship, there is no documentation that objectively verifies these claims, such as letters from her employers establishing her income, utility bills, bank statements, tax returns, car loan documents or even a summary of financial obligations. Assertions that the applicant's spouse would benefit from a second income in the future are not relevant, as they are speculative, and do not constitute an actual injury. The AAO notes that the applicant's spouse informed [REDACTED] during one of her interviews that there is a high level of unemployment in India, and that she would have to send the applicant money for him to survive. She further claimed that there would be nothing left of her salary to live on. However, as previously discussed, the record contains no documentary evidence that establishes the applicant's economic prospects in India and, therefore, fails to support this assertion. Without evidence that is probative on the applicant's and his spouse's financial situation, the record does not establish that the applicant's spouse will suffer financial hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if he is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) 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. Accordingly the AAO will not address counsel's assertions regarding the weight to be given the applicant's equities in the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.