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#2

FILE:

Office: NEWARK, NEW JERSEY

Date: FEB 24 2009

IN RE:

Applicant:

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

for John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Newark, New Jersey, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting her identity and intentions when attempting to enter the United States; and 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 more than one year and seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is married to a lawful permanent resident of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse.

The Acting District Director found 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 Excludability (Form I-601) accordingly. *Acting District Director's Decision*, dated November 6, 2006.

On appeal, the applicant, through counsel, contends that the Acting District Director "discounts the evidence indicating that it does not establish extreme hardship. The equities in this case are clear and convincing." *Attachment to Form I-290B*, filed December 4, 2006.

The record includes, but is not limited to, counsel's brief, a letter from the applicant's husband, letters of recommendations, two psychological evaluations performed by [REDACTED] a letter from [REDACTED] regarding the applicant's infertility, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) 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 [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.

.....  
(v) Waiver.-The [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.

In the present application, the record indicates that on August 9, 1995, the applicant entered the United States on a P-2 nonimmigrant visa, with authorization to remain in the United States until September 30, 1995. On April 4, 1998, the applicant departed the United States. On April 20, 1998, the applicant attempted to enter the United States, and when apprehended, she presented herself as someone else.<sup>1</sup> On April 30, 1998, a Notice to Appear (NTA) was issued against the applicant. On July 21, 1998, an immigration judge administratively closed the applicant's case. On December 13, 2001, Apex Hospitality Corporation filed a Petition for Alien Worker (Form I-140) on behalf of the applicant. On February 5, 2002, the applicant's Form I-140 was approved. On May 3, 2002, an immigration judge re-calendared the applicant's initial immigration case, and then on July 30, 2002, the immigration judge terminated proceedings against the applicant. On July 2, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 9, 2003, the applicant filed a Form I-601. On October 27, 2003, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to establish that she had the requisite qualifying relationship to establish statutory eligibility for the waiver relief sought under the Act. The applicant failed to file an appeal of the District Director's decision. On October 31, 2003, another NTA was issued against the applicant. On October 3, 2005, an immigration judge terminated the second immigration proceedings against the applicant. On April 12, 2006, the applicant filed another Form I-601. On November 6, 2006, the

<sup>1</sup> The AAO notes that the applicant presented herself as [REDACTED]

Acting District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her spouse.

Counsel states "[i]t is not disputed that [the applicant] did misrepresent herself on [April 19, 1998 and April 30, 1998] including giving a false name and stating false intentions upon arrival in the United States." *Appeal Brief*, December 21, 2006. Therefore, the AAO finds that the applicant willfully misrepresented material facts in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The AAO notes that the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until April 4, 1998, the date the applicant departed the United States for Canada. However, it has been 10 years since the applicant departed the United States; therefore, the AAO finds that the applicant is no longer inadmissible under section 212(a)(9)(B)(II) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's husband will suffer extreme hardship if the applicant is removed to India. *See Appeal Brief, supra.* [REDACTED] diagnosed the applicant's husband with major depressive disorder. *See psychological evaluations by [REDACTED]* dated September 26, 2005, and August 27, 2004. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a two interviews over one year between the applicant's husband and a psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's husband. Moreover, the conclusions reached in the submitted evaluation, being based on a two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a

determination of extreme hardship. The applicant's husband states he suffers from "health problems. These include diabetes and extremely high cholesterol. [He] suffer[s] from acute acidity." *Statement from* [REDACTED], dated September 25, 2003. The AAO notes that the applicant failed to submit any documentation establishing that her husband is suffering from any medical conditions. Furthermore, there is no evidence in the record establishing that the applicant's husband could not receive treatment for his medical conditions in India or that he has to remain in the United States to receive medical treatments. Additionally, the applicant submitted evidence regarding her infertility; however, the AAO notes that it has not been established that she could not receive treatment in India or has to remain in the United States to receive treatments. *See letter from* [REDACTED], dated July 1, 2004. Counsel states that the applicant's husband is gainfully employed and "he is making a positive contribution to the community of the United States." *Appeal Brief, supra*. The AAO notes that the applicant's husband is employed as a quality control inspector in the construction field and it has not established he has no transferable skills that would aid him in obtaining a job in India. *See psychological evaluation by* [REDACTED], dated August 27, 2004. Additionally, the applicant's husband is a native of India, he spent his formative years in India, he speaks the native language, and his parents reside in India. *See psychological evaluation by* [REDACTED], dated September 26, 2005. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanies her to India.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment. As a lawful permanent resident of the United States, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states "[b]oth [the applicant] and [he] work and the loss of her salary would undoubtedly result in the loss of [the] home.... The loss of the second income would also create havoc with paying the other monthly expenses that [they] have incurred." *Statement from* [REDACTED] *supra*. Additionally, the applicant's husband states the applicant "would not be able to find meaningful employment in India. Any position that she might have would undoubtedly pay too little for her even to be able to maintain herself." *Id.* The AAO notes that hardship the applicant herself experiences upon removal is irrelevant to section 212(i) waiver proceedings. Additionally, the AAO notes that the applicant has an economics degree from India, and the record fails to demonstrate that the applicant cannot obtain employment in India, or that she will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. *See psychological evaluation by* [REDACTED], dated August 27, 2004. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the

Ninth Circuit Court of Appeals 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 recognizes that the applicant's lawful permanent resident spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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(a)(6)(C)(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.