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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: JUL 0 2 2009

IN RE: [redacted]

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:

[redacted]

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).

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a stateless Tibetan refugee from 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 procuring entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse, .[1]

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 22, 2007.

On appeal, counsel furnished a declaration from the applicant's spouse and copies of her medical records. 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.

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.

The record reflects that the applicant, a stateless Tibetan refugee, obtained a fraudulent Nepalese passport for travel to the United States. On March 5, 1998, he used the passport to procure a B1/B2 visa from the U.S. consulate in Kathmandu, Nepal. On March 19, 1998, the applicant presented this passport to an immigration officer at San Francisco International Airport for admission to the United States as a B2 visitor. Therefore, the applicant willfully misrepresented material facts by using a

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[1] The AAO notes that the applicant is seeking to adjust status on the basis of an approved Petition for Alien Relative (Form I-130) filed by his spouse, and not as an asylee pursuant to 8 C.F.R. § 209.2. Therefore, the applicant is subject to the waiver standard found in section 212(i) of the Act rather than that found in section 209(c) of the Act.

fraudulent passport to procure a B1/B2 visa and admission to the United States. Consequently, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant asserts that he is a stateless Tibetan refugee from India. He states that he traveled to the United States with a fraudulent Nepalese passport because he feared persecution in India on account of his political activities. The applicant contends that if his waiver application is not approved, he will be unable to return to India with his wife. He states that his wife would be in danger without any means to support herself because of language barriers as well as government restrictions on employment and property ownership. *Affidavit of* , dated December 10, 2004. The applicant's spouse asserts that in India she would face linguistic barriers, would not be able to own property, and would not be employable. She contends that she would face rejection from society and danger because of the applicant's past political activities. *Affidavit of* dated November 27, 2004.

The AAO notes that the U.S. Department of State's country condition report on human rights practices in India provides the following in regard to the status of Tibetan refugees:

> The laws do not provide for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, but the government has established a system for providing protection to refugees against the expulsion or return of refugees to countries where their lives or freedom would be threatened,

> especially to Tibetans and Sri Lankans. According to the Office of the UN High Commissioner for Refugees (UNHCR), during the year there were 11,321 refugees under UNHCR mandate in the country. Since 1960, the government has hosted approximately 110,000 de facto refugees from Tibet. Tibetan leaders in the country stated that the government treated them extremely well. The Ministry of Home Affairs has spent 180,600,000 rupees (approximately $4.2 million) on Tibetan refugee resettlement.
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> Due to the absence of clear guidelines, the refugees are governed under the Foreigners Act 1946 that defines a foreigner as a person who is not a citizen of India and is thus eligible to be deported.

U.S. Department of State, *2008 Human Rights Reports: India*, February 25, 2009.[2]

The above country conditions indicate that although Tibetan refugees are permitted to reside in India, they are considered "foreigners" in the country. Given the Indian government's failure to grant permanent status to Tibetan refugees in India, it is unclear whether the applicant's spouse, a non-Tibetan U.S. citizen, would have any type of rights to residence and employment in India. For this reason, it has been established that the applicant's spouse would suffer extreme hardship if she relocated to India due to the applicant's inadmissibility.

Hardship to the applicant's spouse in the event that she accompanies the applicant to India is material for establishing eligibility for a waiver under section 212(i) of the Act; however it is not the only factor to be considered. Extreme hardship to the applicant's spouse must be established in the event that she accompanies the applicant or in the event that she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant's spouse asserts that returning to India is not an option for the applicant. She states that the applicant is a stateless individual, and his life would be in danger if he returned to India. *Affidavit of* [redacted], dated November 27, 2004. Although extreme hardship to the applicant is not relevant for the purpose of establishing eligibility for a waiver under section 212(i) of the Act, it will be considered insofar as it results in emotional hardship to the qualifying relative.

The record reflects that the applicant was granted asylum by the San Francisco Asylum Office on June 13, 2001. Asylum is granted to individuals who are unable or unwilling to avail himself or herself of the protection of their county of nationality or last habitual residence because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Section 101(a)(42) of the Act, 8 U.S.C. 1101(a)(42).

The applicant's asylum application (Form I-589) reflects that he was an active member of the Tibetan Youth Congress in India. The application reflects that the applicant was beaten and arrested by the India police for his political activities as an advocate for Tibetan independence. *Asylum*

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[2] http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119134.htm

Affidavit of , dated July 18, 2000. The applicant asserts the following in regard to his persecution in India:

> I was born in India in Manju-Ka-Tilla, a Tibetan refugee settlement. As a refugee, I was not a citizen of India and had limited rights, restricted access to employment, education and property. I was granted refugee status and it expired while I was in the United States. I fled my country of birth, India, for my safety. Based on my refugee status and my political activities in India, I was a target for local police. I had been jailed, beaten and threatened repeatedly. The situation had been escalating and I was in fear for my life. I was very active in local demonstrations for Tibetan freedom and drawing political attention to the atrocities the Chinese government has committed in my parent's homeland. Because of my participation and the organizing of demonstrations, I was the target of police. I was not only jailed, beaten, but frequently checked on by authorities. They regularly followed me and came to my home. I was threatened that I would be punished for any unsolved crimes in the area. I was in great fear.

Affidavit of dated December 10, 2004.

The AAO notes that the U.S. Department of State country condition report on human rights practices in India lists the following country conditions for politically active Tibetan refugees:

> Prior to the Olympic Games in August, Tibetan refugees protested throughout the country. The Tibetan Youth Congress (TYC) organized most of the protests and reported that, on the whole, police did not mistreat the refugees during arrests or dispersion of the crowds. These demonstrations began on March 13, when an estimated 100 Tibetan protesters were arrested near Dharamsala, Himachal Pradesh, in their protest march to the Tibetan capital of Lhasa. Police detained the protesters for 11 days. On April 15, 45 TYC members participated in the Tibet Independence Torch relay, and 33 of them were arrested and detained in Tihar jail. The following day, 65 activists protested at the Chinese Embassy in Delhi, and 48 were arrested. According to TYC reports, some female activists were injured when police officers forcibly arrested them.
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> On April 17, TYC organized 300 protesters to demonstrate against the arrival of the Olympic torch in the country. According to TYC, police arrested almost all of the protesters. TYC accused Mayapuri police of beating some protesters, resulting in injuries for two protesters. On April 30, in an address before the parliament, the Ministry of Home Affairs stated that 680 Tibetan protesters were arrested in various states in the country during the March protests.
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> On July 28, TYC launched a series of three hunger strikes in Delhi as part of the Olympic protests. When police forcibly removed the first group of hunger strikers, Tibetans protested. Police arrested 86 protesters who tried to prevent police from reaching the hunger strike tent; the protesters were released on August 20. On August 24, TYC terminated the fast.

U.S. Department of State, *2008 Human Rights Reports: India*, February 25, 2009.[3]

The following report offers mixed reviews of the status of politically active Tibetan refugees in India. The report states that, on the whole, the police did not mistreat Tibetan refugees who were dispersed or arrested for protesting prior to the Olympic Games, which were held in China. However, the report also notes that the Tibetan Youth Congress reported that on April 17th some Tibetan protesters were beaten, resulting in injuries for two protesters. Accordingly, there is no conclusive answer as to whether all politically active Tibetan refuges in India are subject to harm.

Furthermore, the applicant has failed to demonstrate that he would be subject to harm if he returned to India. The AAO notes that first, the applicant has not furnished any country condition reports on the status of returning Tibetan refugees in India. According to the aforementioned U.S. Department of State report, Tibetan leaders in India stated that the government treated them extremely well. The report notes that the Indian government has spent approximately $4.2 million on Tibetan refugee resettlement. Second, the applicant has not indicated whether he remains politically active with the Tibetan Youth Congress or any other Tibetan independence organization. This information would be essential to a determination of the harm the applicant could possibly suffer if he continued his political activities in India. Third, the applicant asserts that he was targeted by police in India. However, his asylum application reflects that he departed India on March 18, 1998. The applicant has not demonstrated that the police would continue to target him if he returned to India ten years after his departure. Finally, the AAO notes that both the applicant and his spouse have asserted that they plan to return to India, indicating the applicant does not have a fear of future persecution in India. The applicant states, "Permanent residence would also give us the ability to one day travel and meet again with my immediate family. . . ." *Affidavit of* [redacted], dated December 10, 2004. Similarly, the applicant's spouse states, "With permanent resident status it would be possible for us to travel to India in the future. This way, our family can meet his family remaining in India." *Affidavit of* [redacted], dated November 27, 2004. For these reasons, the AAO finds that the applicant failed to meet his burden of proof in establishing that his spouse would suffer hardship as a consequence of the harm he might suffer if he returned to India. Accordingly, the AAO cannot conclude that the applicant's spouse would suffer emotional hardship that, when combined with other hardship factors, is beyond the hardship normally expected upon the removal of a family member if the applicant was denied admission to the United States.

The applicant's spouse asserts that she depends on the applicant financially. She states that without the applicant, she would not be able to continue living in her apartment and would have to leave Berkeley due to the cost of living. She further states that she would not be able to afford to maintain her car, resulting in her inability to timely travel to her places of employment. She contends that she would no longer be able to babysit once a week, and attend her doctor's appointments. She indicates that she depends on her combined income with the spouse for her continued employment and health care coverage. *Affidavit of* [redacted] dated November 27, 2004.

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[3] *Id.*

The AAO notes that the applicant has failed to provide any documentation in relation to his and his spouse's financial situation, such as their annual income and expenses, and assets and liabilities. 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)). The AAO recognizes that the refusal of the applicant's admission to the United States may cause economic detriment to his spouse. However, a reduction in standard of living does not necessarily result in extreme hardship. U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.")

On appeal, the applicant's spouse asserts that she has a working diagnosis of hypothyroidism due to a pituitary tumor and Addison's disease, an autoimmune disorder affecting the Adrenal Glands. She states that Addison's disease is a life threatening condition requiring her to wear an emergency medical identification and carry an emergency injection kit of prescribed medication. The applicant's spouse notes that she has yet to get a complete diagnosis. She indicates that she is currently suffering from profound fatigue, muscle weakness, inability to build muscle and resistance to exercise. She states that she has digestive problems and several other symptoms. The applicant's spouse indicates that she has consulted numerous health care professionals and has undergone numerous diagnostic procedures. The applicant's spouse notes that she is being treated by [redacted], and has been taking Synthroid, Fortef, Ativan, Solu-Cortef and DHEA. She states that she is covered by Blue Cross insurance through her employer for catastrophic care, which does not cover doctor appointments, lab tests, or MRIs. She states that she spent over $9,000.00 over the last three years for her medical expenses. The applicant's spouse indicates that due to her illness she has lost $3,000.00 per year in the last three years of income. She notes that she has agreed to be part of a long term study on growth hormone replacement, and will pay 30% of the $1,000-1,500 monthly cost for this medication. The applicant's spouse indicates that she has become dependent on the applicant because of her illness. She states that she has difficulty with running errands, housework, laundry, dinner, paying bills, and making daily appointments. *Declaration of* [redacted], dated March 26, 2007.

The counsel furnished as corroborating documentation, initial consultation and subsequent progress reports, and various lab results and medical bills. The reports, dated November 15, 2004, December 9, 2004, February 22, 2005, May 31, 2005, August 9, 2005, September 13, 2005, March 27, 2006, September 26, 2006 and December 5, 2006, provide [redacted] notes on the applicant's symptoms, medications and progress. The most recent progress report, dated

December 5, 2006, provides that the applicant has a pituitary disorder, thyroiditis, constipation, and malaise and fatigue. It states that her current medications are Cortef, Ativan, Solu-Cortef and DHEA. The AAO finds that these reports, alone, are not sufficient to establish the applicant's health condition. For instance, the terms constipation, malaise and fatigue, are general medical conditions that can be the result of a number of underlying illnesses. Pituitary disorder and thyroiditis are also broad medical terms that fail to indicate the applicant's exact medical disorder. The progress reports do not indicate the type of thyroid disorder and pituitary disorder suffered by the applicant. Without a medical report documenting the effects the diagnoses and symptoms have on her activities of daily life, the AAO cannot determine the severity of the applicant's spouse's medical conditions and how they may contribute or lead to hardship. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

The record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's wife will suffer emotionally as a result of separation from the applicant. Her situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. United States 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his United States citizen spouse as required under 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 section 212(i) 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.