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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
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Services

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FILE: [REDACTED] Office: NEW DEHLI, INDIA

Date: JUL 06 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:

SELF-REPRESENTED

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).

A handwritten signature in black ink that reads "Michael Shumway".

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. 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 having attempted to procure admission into the United States by fraud or willful misrepresentation when he submitted a fraudulent K1 visa application. The applicant is the son of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer-in-charge found that the record indicated that the applicant's father was living in India. The officer-in-charge concluded that the record provided no credible evidence to reflect that the applicant's father would suffer extreme hardship as a result of the applicant's inadmissibility. The application was denied accordingly. *Decision of the Officer in Charge*, dated November 28, 2006.

On appeal, the applicant's father states that he has met the burden of showing extreme hardship to have his son join him in the United States and that the applicant is the only child who is not married and is able to assist him with his ailment. *Form I-290B and Attachment*, dated December 18, 2006.

The record indicates that on February 14, 2000 the applicant appeared for a K1 fiancé visa interview at the U.S. Consulate in Mumbai. The applicant stated during the interview that he had not met the petitioner of the fiancé petition before she recently visited India and that within a week of meeting they were engaged. A field investigation was then completed resulting in a finding that the petitioner of the fiancé petition was the spouse of the applicant's brother and that the engagement occurred for the sole purpose of facilitating the applicant's immigration to the United States. Thus, the applicant sought to procure a visa to the United States by fraud.

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) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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). 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).

The AAO notes that extreme hardship to the applicant's father must be established in the event that he resides in India and in the event that he resides 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 AAO will consider the relevant factors in adjudication of this case.

The applicant's father states that his son is not engaged in various obligations and he is the only son that can live with him and assist him with his needs. *Attachment to Form I-290B*, dated December 18, 2006. The applicant's father also states that he does not have the energy to visit the applicant in India anymore and that his family reunions are not complete without his son. *Id.*

The applicant's sister states that her father is a diabetic and is in need of assistance constantly. *Sister's Statement*, dated May 15, 2006. She states that the family misses the applicant and would like to have him in the United States. *Id.*

The AAO notes that the record also contains a Consular Interview Report from the U.S. Consulate in Mumbai, India from the applicant's waiver application interview conducted on January 11, 2006. In this interview that applicant stated that his father had been living with him in India for the last two years. The applicant stated that his father is a diabetic and in poor overall health and before moving to India his father lived with his sister in Georgia. The applicant also stated that his father's medical treatments in the United States were not working so he decided to return to India. The applicant stated that he was supporting his father physically, but not financially. Finally, the applicant stated that he and his father would have a good life if he were allowed to move to the United States and that if he is not allowed to do so, it will cause his father to feel bad. The AAO also notes that the record contains a note from the applicant's father's doctor at the HM Patel Centre for Medical Care and Education which states that the applicant's father has Type 2 Diabetes with nephropathy and neuropathy to last two years. *Doctor's Note*, dated January 1, 2006.

The AAO finds that the record does not support a finding that the applicant's father will suffer extreme hardship as a result of the applicant's inadmissibility. The applicant's father has chosen to reside in India where he is receiving medical treatment and while in the United States he was living with the applicant's sister. The AAO notes that the record is inconsistent as to the applicant's father's need for the applicant to reside in the United States to help care for him. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 father 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.