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U. S. Citizenship and Immigration Services
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U.S. Citizenship
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Services

H2

FILE

Office: ST. PAUL (BLOOMINGTON)

Date: JUN 30 2009

IN RE: Applicant:

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, St. Paul, Minnesota, and appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The record indicates that the applicant, a native and citizen of India, procured entry to the United States, in September 1998, by presenting a passport and U.S. visa belonging to another individual. The applicant was thus 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 procured entry to the United States by fraud and/or willful misrepresentation.¹ The applicant 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 her lawful permanent resident father and U.S. citizen mother.

The field office 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 27, 2007.

In support of the appeal, counsel for the applicant submits a brief, dated July 24, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

....

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

Section 212(i) of the Act provides:

- (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

¹ The applicant does not contest the field office director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

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)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's parents are the only qualifying relatives for purposes of a 212(i) waiver, and hardship to the applicant, her spouse² and/or their U.S. citizen children cannot be considered, except as it may affect the applicant's parents.

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 alien has established extreme hardship to a qualifying relative. 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The applicant's mother and father contend that they will suffer extreme hardship if the applicant is unable to reside in the United States. In separate declarations, the applicant's parents note that they will suffer emotional hardship due to the close relationship they have with the applicant. Moreover, both parents assert that were the applicant to relocate abroad due to her inadmissibility, the children would accompany the applicant; such a long-term separation from their grandchildren would cause the applicant's parents extreme emotional hardship. In addition, both parents reference that they suffer from medical conditions, including diabetes and thyroid problems, and the applicant's father asserts that he has been diagnosed with depression. Both parents conclude that they need the

² The record establishes that the applicant's spouse has filed the Form I-485, Application to Register Permanent Residence or Adjust Status, based on derivative status, as the spouse of the applicant.

applicant nearby to assist them should the need arise, as she has done in the past. *See Affidavit of* [REDACTED] dated March 6, 2007 and *Affidavit of* [REDACTED] dated March 6, 2007.

To support the emotional hardship referenced with respect to the applicant's father, a psychiatric evaluation has been provided by [REDACTED]. In said evaluation, [REDACTED] concludes that the applicant's father suffers from major depression. *See Psychiatric Evaluation of* [REDACTED] dated March 1, 2007. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation appears to be based on a single interview between the applicant's father and the psychiatrist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's father and/or the applicant's father's mental health status at the time of the appeal submission. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychiatrist, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Finally, the applicant's father's mental health condition does not appear to be extreme as the record reflects that he is able to operate two liquor stores. It has thus not been established that the applicant's parents would suffer extreme emotional hardship were they to remain in the United States while the applicant resides abroad.

Moreover, with respect to the applicant's parents' medical conditions, no documentation has been provided with the appeal from the applicant's parents treating physician(s) outlining their current medical condition, the gravity of their situation, the short and long-term treatment plan, what specific assistance they need from the applicant, and what hardships they would face were the applicant to relocate abroad due to her inadmissibility. The laboratory results provided by counsel do not establish that without the applicant's presence, her mother and/or father would experience extreme hardship. In addition, the AAO notes that the applicant's parents are married, and have an extensive family support network in the United States, including parents, children, grandchildren, and siblings, most of whom live in closer proximity to the parents than the applicant. It has not been established that the extended family network is unable to assist the applicant's parents, emotionally and/or physically, should the need arise. 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)).

As for the hardships referenced by the applicant's parents with respect to their long-term separation from their grandchildren, no documentation has been provided to establish the applicant's parents' current involvement with the children, to establish that the children's long-term absence would cause them extreme hardship. The AAO notes that the applicant's parents currently live in Delaware, thousands of miles away from the applicant's children. Nor has it been established that the applicant's children would suffer extreme hardship were they to reside in India, thereby causing the applicant's parents extreme hardship. General assertions about problematic country conditions in India does not suffice to establish that the children specifically would encounter extreme hardship

were they to relocate to reside with the applicant, thereby causing extreme hardship to the applicant's parents, the only qualifying relatives in this case.

Finally, it has not been established that the applicant's parents are unable to travel to India, their home country, to visit the applicant and their grandchildren on a regular basis. Although counsel references the high costs of travel to India and the parents' inability to leave for long periods of time due to the loss of income derived from their liquor store, the AAO notes that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. Thus, the AAO concludes that it has not been established that the applicant's parents will suffer extreme hardship were they to remain in the United States while the applicant resides abroad due to her inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. Although the applicant's parents note that their family network is in the United States, the record fails to establish what specific hardships they would face were they to relocate to India, their home country, to reside with the applicant.

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 parents will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a child is removed from the United States and/or refused admission. There is no documentation establishing that the applicant's parents' hardships would be any different from other families

separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's parents' situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.