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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: CHICAGO

Date: **MAY 04 2009**

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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).

A handwritten signature in cursive script that reads "Michael Shumway".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. 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, the spouse of a U.S. Lawful Permanent Resident (LPR), the mother of two U.S. citizen children, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children. The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application.

On appeal counsel argued that the evidence does not show that the applicant is inadmissible. Counsel also contended that the evidence demonstrates that denial of the waiver application would cause extreme hardship to the applicant's husband.

Section 212(a)(6)(C)(i) of the Act provides:

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.

The record contains a sworn statement, dated April 25, 2006, that the applicant gave at her interview for adjustment of status. In that interview the applicant stated that she last entered the United States during July 1996, at New York, "with a plane ticket [and] passport bearing someone else's name." She stated that she had paid \$1,000 to a friend named Sue who arranged for someone to procure the documents. She further stated that she never held the plane ticket or passport, but appeared to imply that a man who accompanied her presented them to immigration officials.

On appeal, counsel asserted that the applicant did not personally present the documents and that no one asked her for documents. He stated, ". . . all case law in this regard requires some sort of affirmative conduct in order for their [sic] to be fraud." He argued that the evidence does not show that the applicant herself made any misrepresentation. Previously, in a response to a request for evidence, counsel asserted the belief that the applicant's entry into the United States was therefore an entry without inspection, and that she is not, therefore, inadmissible. The AAO disagrees.

Although counsel cited no authority, the AAO agrees that a misrepresentation must require some affirmative act. *See Matter of Y-G-*, 20 I&N Dec. 794, 797 (BIA 1994). Whether counsel intended to allege that the applicant's agent presented the fraudulent documents to immigration officials, or whether he intended to allege that they were never presented at all, is unclear. The assertion that the documents were never presented, and that the applicant and her agent, exiting an international flight

at an international airport merely avoided inspection, is manifestly unlikely and not supported by any evidence.

The assertions of counsel 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). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof.

Given the applicant's admission that she "entered through New York, NY illegally with a plane ticket [and] passport bearing someone else's name," this office finds that the applicant's fraudulent passport was, in fact, presented to gain entrance into the United States. The AAO finds that even if the agent had physically possessed and presented the fraudulent passport, this would not negate the commission of an affirmative act as necessary to constitute misrepresentation. That the applicant paid \$1,000 for fraudulent entry documents and acquiesced in their use on her behalf to be admitted to the United States are sufficient affirmative acts notwithstanding that an agent may have held the documents and spoken for her.

The applicant's admission is sufficient to show that she willfully misrepresented a material fact in procuring admission into the United States and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . ."

A waiver of inadmissibility under section 212(i) of the Act 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 or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. 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 nonexclusive list of factors relevant to determining whether an alien 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. The BIA has held:

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).

In a July 19, 2006 affidavit, the applicant's husband stated that his wife does not work, but cares for their home and children. He stated that he would be unable to live in the United States without his wife, as he is unable to afford full-time child care and would therefore have to work only part-time, the income from which would be insufficient. He further stated that his children would be devastated by the loss of their mother.

The AAO notes that birth certificates provided by the applicant indicate that her younger child is almost eight years old, and that the record indicates that she attends school. The evidence in the record is insufficient to demonstrate that she and her older brother would require full-time child care. Further, the record does not demonstrate that affordable, competent child care is unavailable. The evidence does not demonstrate that the applicant's husband would be obliged to reduce his work schedule.

The applicant's husband also stated that he has diabetes and requires medicine, which his wife procures and reminds him to take. He added that he does not believe that his medication would be available in India, but did not identify the medication or explain why he thinks it would be unavailable. He further stated that his children know nothing of life in India, speak only a little Gujarati, and would be unable to attend school in India. He stated that he has not been to India in ten years and that moving there would require him to sell a gas station he recently acquired.

The record contains no indication that the applicant's husband would be unable to fill his own medication prescriptions and take his medications without his wife's prompting. Further, other than the applicant's husband's conclusory assertion, the record contains no evidence that the applicant's

husband's ten-year absence would preclude his locating employment in India. That his children are not accustomed to India might occasion hardship to them, but the record contains no evidence, nor even an assertion, that it would occasion hardship to the applicant's husband. If the applicant's husband were obliged to move to India, and was unable to operate his newly acquired business remotely, that would oblige him to sell the business. The record contains no indication that he would suffer any financial loss in that transaction, let alone a great loss, and, in any event, he is not obliged to leave the United States.

The record contains a Clinical Evaluation, dated July 20, 2006, from [REDACTED], a clinical social worker. [REDACTED] stated that the applicant's family is structured pursuant to traditional Indian values and gender role division, with the applicant maintaining the home and caring for the children while her husband provides for them financially and pragmatically. She states that the applicant's children are therefore very close to her and the applicant's husband is overwhelmed by the thought of having to care for the children without the applicant. She quoted the applicant's husband as stating, "Everyone will suffer if she is gone."

[REDACTED] also stated that the applicant's husband had purchased a gas station three months before, and that he projects that "[t]o abandon the business . . . would send the family into a backwards financial spiral." [REDACTED] further stated that following the applicant to India is inconceivable for her husband, because he feels that "his family would be thrown into abject poverty in India due to an absence of viable work options there."

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report appears to be based on a single interview between the applicant's husband and the social worker and, to a great extent, merely restates the applicant's own projections. The record fails to reflect an ongoing relationship with the applicant's husband or any history of treatment for any disorder suffered by the applicant's husband. Moreover, the conclusions reached in the submitted report, being apparently based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established professional relationship, thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship.

The decision of denial noted that, although the applicant's husband asserted that he has diabetes, the record contains no medical evidence. On appeal, counsel provided blood work results and a copy of a Detail History and Physical Examination dated February 8, 2005.

The blood work report shows that, on August 1, 2005 the applicant's husband had high blood sugar. It also shows that he had elevated liver enzymes, elevated cholesterol and other elevated lipids, but does not indicate the severity of any condition indicated by those results.

The person who prepared the Detail History and Physical Examination is unidentified. At the beginning, that document states, "This is a 32 y.o. male . . ." Thereafter it is largely illegible. It appears to state that the applicant's husband presented with a cough and congestion, that his lungs were clear, and that he was prescribed Amoxicillin, but that is far from clear. In any event, the

AAO finds no reason to believe that it supports the applicant's husband's claim that he has diabetes or any other chronic ailment, or, if he does have such an ailment, that it is of such severity that it precludes his living in India or living in the United States without his wife.

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 the applicant is refused admission. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant's family members are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor 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 affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute 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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her LPR spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.