



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW DELHI, INDIA

Date: NOV 05 2009

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India. The matter 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)(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 ten years of his last departure from the United States. The applicant is married to a naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their United States citizen children.

The Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Field Office Director*, dated February 12, 2007.

On appeal, counsel contends that the applicant's qualifying relative would suffer extreme hardship and thus qualifies for a waiver. Counsel also indicates that additional evidence will be submitted in support of the waiver application. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*. As the additional materials referenced by counsel are not found in the record as of the date of this review, the AAO considers the record to be complete.

In support of these assertions the record also includes, but is not limited to, statements from the applicant; statements from the applicant's spouse; a statement from one of the parents of the applicant's spouse; a statement from the administrator/minister at the applicant's church; a sheriff's report; a mortgage statement; and electricity bills. The entire record was reviewed and considered in rendering a decision on the appeal.

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 Attorney General [now the Secretary of Homeland Security (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 Attorney General [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 case, the record indicates that the applicant entered the United States without inspection at St. Thomas, U.S. Virgin Islands on March 5, 1992. *Form I-213, Record of Deportable Alien*, dated March 5, 1992. This same date, the applicant was placed into proceedings. *Order to Show Cause, Notice of Hearing and Warrant for Arrest of Alien*. On December 3, 1992 the applicant was ordered deported by an immigration judge. *Decision of the Immigration Judge*, dated December 3, 1992. The applicant remained in the United States and married on November 3, 1995. *Marriage certificate*. On July 20, 1996 a Form I-130, Petition for Alien Relative was approved for the applicant. *Form I-130*. On February 20, 2002 the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. *Form I-485*. On June 18, 2002 the applicant presented himself at an Immigration and Naturalization Service (INS) office in Charleston, South Carolina where he was taken into custody and held for Reinstatement of Deportation. *Form I-213, Record of Deportable/Inadmissible Alien*, dated June 18, 2002. On July 30, 2004 the applicant was removed to India. *Warrant of Removal/Deportation*. The applicant, therefore, accrued unlawful presence from April 1, 1997, the effective date of the enactment of unlawful presence provisions under the Act, until he filed the Form I-485 application on February 20, 2002. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining the bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002*. As the applicant is seeking admission to the United States within ten years of his 2004 removal, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) 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. The plain language of the statute indicates that hardship that the applicant or his children would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If 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 (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 family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in India or the United States, as she is not required to reside outside 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.

If the applicant's spouse travels with the applicant to India, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of India. *Naturalization certificate*. The record does not address how the applicant's spouse would be affected if she resides in India. The record does not address employment opportunities for the applicant's spouse in India, nor does the record document, through published country conditions reports, the economic situation in India and the cost of living. The record makes no mention of whether the applicant's spouse suffers from any type of health condition, physical or mental, that would require treatment in India and if so, whether she would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in India.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of India. *Naturalization certificate*. According to the applicant's spouse, she is struggling financially without the applicant. *Statement from the applicant's spouse*, dated January 27, 2005. She notes that she is the only provider in their family, and that she must pay for their rent, car payments and credit card bills through her insufficient income. *Id.*; *Mortgage statement and electricity bills*. She asserts that she is going deeper into debt without the applicant and that, within the past year, she has had to move out of her home and sell the family business. *Statement from the applicant's spouse*, dated August 29, 2006. The applicant's spouse also provides a list of her monthly expenses and an estimate of her monthly income, which indicates that her income is insufficient to pay her bills. *Monthly Expenses*. While the AAO acknowledges the statements of the applicant's spouse, it notes that the record does not provide documentary evidence to support the applicant's spouse's estimate of her income and, therefore, does not establish that she is unable to meet her monthly financial obligations. Neither does it include proof that the applicant's spouse has sold her home or the family business. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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 also notes that the record does not demonstrate that the applicant would be unable to contribute to his family's financial well-being from India. The record does not include published country conditions reports documenting the economic situation and employment availability in India. The

applicant's spouse states that she has shown symptoms of frequent fatigue and absent-mindedness when performing her job due to the trauma she is experiencing with her children. *Statement from the applicant's spouse*, dated January 27, 2005. She asserts that if these symptoms continue, she may lose her job. *Id.* While the AAO acknowledges these claims, it again notes that the record fails to include documentary evidence to support them, e.g., a statement from a licensed healthcare professional documenting the health conditions of the applicant's spouse. *Id.*

One of the parents of the applicant's spouse notes that without the applicant, the lives of the applicant's spouse and her children are miserable. *Statement from the applicant's spouse's parent*, undated. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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(a)(9)(B) 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.