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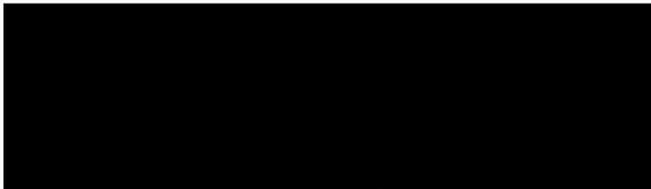


FILE: [REDACTED] Office: LOS ANGELES, CA (SANTA ANA) Date: **NOV 17 2009**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Ground of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

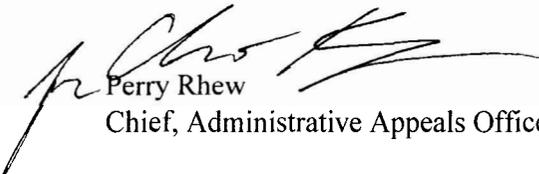
ON BEHALF OF APPLICANT:



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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 47-year-old native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has procured immigration documentation and/or benefits through fraud or misrepresentation. The applicant is married to a U.S. citizen, and he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and sons in the United States.

The District Director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *See Decision of the District Director*, dated Sept. 25, 2006. On appeal, the applicant contends through counsel¹ that U.S. Citizenship and Immigration Services (USCIS) erred in denying the application. *See Form I-290B, Notice of Appeal; Brief in Support of Appeal*. Specifically, the applicant contends that the District Director failed to consider all of the factors under the extreme hardship standard. *Id.*

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married in India in 1983; copies of the birth certificates for the couple's two sons; an affidavit from the applicant's wife; financial documents; a grant deed relating to property in Anaheim, California; Indian country conditions information; documentation relating to the applicant's three California convictions for Driving Under the Influence of Alcohol; and a brief on appeal. The entire record was reviewed and considered in rendering this decision on appeal.

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

Misrepresentation

(i) 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 chapter is inadmissible.

¹ The AAO notes that [REDACTED], of Los Angeles, California, is one of the attorneys who entered an appearance in this case. *See Form G-28, Notice of Entry of Appearance of Attorney or Representative*, dated Aug. 17, 2006. [REDACTED] was suspended from practicing law before the Department of Homeland Security and the Executive Office for Immigration Review on October 25, 2007, and he has not been reinstated. *See In re: [REDACTED]*, [REDACTED], <http://www.usdoj.gov/eoir/profcond/chart.htm> (Aug. 19, 2009).

The record shows that the applicant arrived in the United States on February 8, 1989, presenting an Indian passport and a B1/B2 visa in the name of [REDACTED] *See Form I-546, Order to Appear, Deferred Inspection.* The immigration officer referred the applicant to secondary inspection. *Id.* During secondary inspection, the applicant executed an affidavit stating:

My true and correct name is [REDACTED] . . . The purpose of my trip is to remain in this country and live in the United States. I also have an I-688 under section 210 as a seasonal agriculture [sic] worker. I have never worked on a farm, and all the document [sic] I used to apply for this status are not real. I paid \$300.00 U.S. in Atlanta, Ga. to a vendor. I don't remember who the person was who sold me the document . . . in Sept. 1988.

Form I-215W, Record of Sworn Statement in Affidavit Form, dated Feb. 8, 1989. Counsel concedes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for engaging in fraud or willful misrepresentation. *See Brief in Support of Application for Waiver of Grounds of Inadmissibility.* Further, because the evidence regarding the applicant's misrepresentation was obtained directly from the applicant, not from his application for temporary status as a Special Agricultural Worker (SAW), the use of this independently-obtained information does not run afoul of the confidentiality provisions set forth in section 210(b)(6) of the Act, 8 U.S.C. § 1160(b)(6). *See Lopez v. Ezell*, 716 F. Supp. 443, 445 (S.D. Cal. 1989) ("On its face, the language of section 1160(b)(6) does not extend to the information not obtained directly from the application itself."). Accordingly, the evidence in the record supports the District Director's determination that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

In order to obtain a section 212(i) waiver, an applicant must show that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(i). Under the plain language of the statute, hardship to the applicant or to his or her children or other family members may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States, and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse is a 46-year-old native of India and citizen of the United States. *See Certificate of Naturalization for* [REDACTED]. The applicant and his wife have been married for 26 years. *See Marriage Certificate*. The couple has two U.S. citizen sons, ages 20 and 24. *See Form I-485; Form I-601*. The applicant’s spouse asserts that she will suffer extreme emotional and financial hardships as a result of the denial of the waiver. *See Affidavit of* [REDACTED].

In support of the emotional hardship claim, the applicant’s wife states that she depends on the applicant “for support, companionship and [as] a partner in day to day living.” *Id.* The applicant’s

wife claims that separation from the applicant, especially given the length of their marriage, would cause “anxiety, depression, and sorrow.” *Id.* Further, she “would be left as a single mother, raising two sons on [her] own.” *Id.* Additionally, the applicant’s wife fears that the applicant’s absence would “cause [her] sadness” because it would leave their sons “without a male role model in their lives, potentially affecting their development into emotionally healthy individuals.” *Id.* In support of the financial hardship claim, the applicant’s wife states that although she works, she depends on both incomes to pay the mortgage, household expenses, and to support their two sons. *Id.* The record shows that the couple has a monthly mortgage payment of \$1,820.44. *See Home Loan Statement.* Tax records indicate a joint income of \$46,307 in 2005, with the applicant contributing \$27,906. *See Tax Records.* Finally, the applicant’s wife mentions financial concerns related to the time and expense of visiting India. *See Affidavit of* [REDACTED]

Although the record suggests that family separation could be difficult for the applicant’s spouse, the evidence presented is not sufficient to support a claim of hardship that rises beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Here, despite the length of the marriage, the record does not support a finding that the claimed emotional hardship of separation would be unusual or extreme. For instance, there is no record of psychological counseling or treatment related to the impending separation. Further, given the ages of the couple’s sons, there is no indication that the challenges of single parenthood would amount to extreme hardship. Additionally, any emotional hardship to the applicant’s sons is not an independent calculation in the hardship analysis. *See* 8 U.S.C. § 1182(i). As the BIA has found, the emotional hardships caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627, *supra*. Additionally, the evidence regarding the couple’s financial situation is insufficient to show that the denial of the waiver would result in extreme hardship. The record indicates that the applicant earned more than half of the joint income in 2005, and that the applicant’s wife would not be able to pay the mortgage on her home based on her income alone. However, a showing of economic detriment and the inability to maintain one’s present standard of living are generally not sufficient to show extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (holding that the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship); *Matter of Pilch*, 21 I&N Dec. at 631. Additionally, the record is silent regarding the actual or potential income of the couple’s sons, as well as the applicant’s potential income from employment in India.

Regarding potential relocation to India, the applicant’s wife states that if the applicant is forced to return to India, neither she nor her sons would accompany him “because of the superior living conditions and opportunities that are available in the United States.” *Affidavit of* [REDACTED] The applicant’s wife also believes that relocation to India would be difficult for her sons who have been educated in the United States and who identify with American culture. *Id.* The applicant’s wife has not provided any information regarding her employment prospects in India. However, counsel contends that there is “a strong likelihood that . . . [the applicant] will unlikely find employment that pays him comparable to the current salary he is earning, given the currency difference.” *Brief on Appeal.* Further, counsel claims that “India still requires financial assistance

from foreign nations as it continues to struggle with its economy.” *Id.* (citing to the U.S. Department of State Background Note on India in the record).

Given the applicant’s wife’s equities in the United States, it appears that relocation to India to live with the applicant could impose challenges. However, the record does not support a finding that these difficulties would be unusual or beyond that which would normally be expected upon relocation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566. First, the record is silent regarding the presence of any additional family ties to U.S. citizens or lawful permanent residents in the United States that would be impacted by relocation. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 (recognizing importance of family ties in the United States). Second, the applicant’s wife has close family ties in India, where her parents and four siblings reside. *See id.* (recognizing importance of family ties in country where the qualifying relative would relocate). Third, the applicant’s speculation regarding the potential for future employment in India is insufficient to show that the financial impact of family relocation would be extreme. *See U.S. Department of State Background Note on India* (noting, among other things, that India has the world’s 12th largest economy and has a large and growing middle class). Fourth, there is no evidence in the record that the applicant’s wife suffers from any significant health conditions that would cause hardship upon relocation. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566. Finally, any adjustment difficulties that would be faced by the applicant’s sons are not considered in the extreme hardship calculation, except to the extent that these hardships would affect the applicant’s wife. *See* 8 U.S.C. § 1182(i) (limiting consideration to the applicant’s spouse or parents). Here, there is no evidence that any adjustment difficulties would adversely affect the applicant’s wife to the extent of rendering her hardship extreme. *See id.*

In sum, although the applicant’s spouse has presented some evidence of harm based on family separation or relocation, the record does not contain sufficient evidence to show that the difficulties encountered by the applicant’s spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one’s family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to overcome the basis for denial of his Form I-601 waiver of inadmissibility.

ORDER: The appeal is dismissed.