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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

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U.S. Citizenship  
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Services

H-2

FILE: [REDACTED] Office: WASHINGTON DC

Date:

SEP 21 2009

IN RE: Applicant: [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:

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, Washington DC, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of India, was found inadmissible to the United States pursuant to 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. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse

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 Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 15, 2007.

In support of the appeal, counsel submits the following: the Form I-290B, Notice of Appeal (Form I-290B), dated June 4, 2007, and copies of items previously submitted in August 2006. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record establishes that the applicant entered the United States on August 31, 2002 with a valid B-2 Visa, as a visitor for pleasure. In September 2002, within 30 days of entry to the United States, the applicant commenced unauthorized employment with Ranstad Agency in Frederick, Maryland. See *Form G-325A, Biographic Information and Letter from* [REDACTED] dated August 16, 2006. Counsel contends that the applicant is not inadmissible under section 212(a)(6)(C) of the Act and thus, the Form I-601 is not required and/or necessary. See *Form I-290B*, dated June 4, 2007.

The Department of State's Foreign Affairs Manual [FAM] provides, in pertinent part:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa...

"A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- (1) The alien is excludable on the true facts; or
- (2) The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

The FAM further states, in pertinent part:

a. You should apply the 30/60-day<sup>1</sup> if an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by:

- (1) Actively seeking unauthorized employment and, subsequently, becomes engaged in such employment....
- (4) Undertaking any other activity for which a change of status or an adjustment of status would be required, without the benefit of such a change or adjustment.

If an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry.

9 FAM 40.63 N4.7-1, 7-2.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988);

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<sup>1</sup> The FAM states the following regarding the 30/60 day rule:

a. In determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application or to an immigration officer when applying for admission. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either:

- (1) Apply for adjustment of status to permanent resident; or
- (2) Fail to maintain their nonimmigrant status (for example, by engaging in employment without authorization by DHS).

b. To address this problem, the Department developed the 30/60-day rule. This rule is intended to facilitate adjudication of these types of cases consistent with the statutory mandates.

9 FAM 40.63 N4.7.

*Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not misrepresent himself to obtain an immigration benefit, specifically, a B-2 visa and subsequent entry, by fraud and/or misrepresentation. Had the applicant disclosed that he intended to seek employment upon entry to the United States, the consular officer would have denied the visa request and/or the immigration officer would have denied the applicant entry to the United States, as the applicant would no longer have been statutorily eligible for the B-2 visa. As such, based on the evidence in the record, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.<sup>2</sup>

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,

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<sup>2</sup> The AAO notes that the applicant may have again misrepresented when re-entering the country as a B-1, Visitor for Business, in February 2003. The record establishes that upon entry to the United States as a B-1 visa holder, the applicant taught Cultural Dance. *Supra* at 1. A letter confirming this activity, and listing the individuals who were taught by the applicant, from February 3, 2003 to March 31, 2003, has been provided. See Letter from ██████████ ██████████ *Mizo Society of America*, dated May 28, 2006. Performing duties as a teacher/instructor do not appear to fall under the purview of the B-1 visa category. As noted in the FAM:

Aliens should be classified B-1 visitors for business, if otherwise eligible, if they are traveling to the United States to:

- (1) Engage in commercial transactions, which do not involve gainful employment in the United States (such as a merchant who takes orders for goods manufactured abroad);
- (2) Negotiate contracts;
- (3) Consult with business associates;
- (4) Litigate;
- (5) Participate in scientific, educational, professional, or business conventions, conferences, or seminars; or
- (6) Undertake independent research.

9 FAM 41.31 N8.

Nevertheless, as the AAO has already determined that the applicant is subject to section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility under section 212(i) of the Act, for his misrepresentation with respect to obtaining unauthorized employment within 30 days of entry to the United States as a B-2, Visitor for Pleasure, as outlined in detail above, it is not necessary to evaluate whether the incidents referenced also amount to misrepresentation under section 212(a)(6)(C)(i) of the Act.

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 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 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...

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) 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. Hardship the applicant himself experiences is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (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 spouse or parent in 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 applicant's spouse contends that she will suffer extreme emotional hardship if her spouse is unable to reside in the United States due to his inadmissibility. In a declaration, she notes that she will suffer extreme emotional hardship due to the long and close relationship she has with the applicant. She further references that her son, 30 years old, has been involved with drugs for a long time and the applicant has been a support to him. Moreover, she notes that her mother is 77 years old and will rely on her daughter and the applicant to care for her when she can no longer live by herself. Finally, the applicant's spouse references that her husband assists with the maintenance of the household. *Letter from* [REDACTED] dated August 15, 2006.

In support of the applicant's spouse's referenced emotional hardship, a letter has been provided by [REDACTED]. Mr. [REDACTED] confirms that the applicant's spouse initially sought

treatment with him in March 1988 for Couples Therapy with her second husband, and then continued Individual Psychotherapy until the summer of 1996. He further notes that he has seen the applicant's spouse for three sessions due to her husband's immigration situation. He concludes that the applicant's spouse is in serious risk of regressing to an earlier dysfunctional psychological condition were the applicant to relocate abroad, and that said condition would undermine her ability to maintain her business, she would be prone to withdraw from social contact and her depression would be reignited. *Letter from* [REDACTED] dated August 30, 2006.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on three sessions between the applicant's spouse and the social worker, conducted almost one year prior to the appeal submission. The record thus fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse and/or documentation outlining the current severity of the applicant's spouse's mental health situation. Moreover, the record establishes that the applicant's spouse was previously treated for depression until the summer of 1996 but "treatment [was] resolved successfully as she [the applicant's spouse] was able to start her own business, buy her own home, and parent her son...." *Supra* at 1. It has not been established that the applicant's relocation abroad would trigger extreme emotional hardship to the applicant's spouse, as it has not been established that she would lose her business, lose her home and/or be unable to help her adult son should the need arise.

Furthermore, it has not been established that the applicant's spouse would be unable to travel abroad to visit her husband on a regular basis. Finally, no documentation has been provided establishing the applicant's spouse's mother's and son's current medical and financial situation, to establish that the applicant's relocation abroad would cause them extreme hardship and by extension, extreme hardship to the applicant's spouse, the only qualifying relative in this case.

Although the depth of concern and anxiety over the applicant's inadmissibility 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 exists. 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 thus concludes that although the applicant's spouse may need to make alternate arrangements with respect to her own care and the care of her mother and/or son were the applicant unable to reside in the United States, it has not been established that such arrangements would cause the applicant's spouse extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, the

applicant asserts that life is very difficult in Mizoram, India. He states that “it is really hard to find a job.... Mizoram is not a prosperous state....” *Letter from* [REDACTED] dated August 16, 2006. In support, counsel has provided general articles about country conditions in Mizoram. No documentation has been provided outlining the specific hardship the applicant’s spouse, the qualifying relative, would experience were she to relocate to India. In fact, in her statement, the applicant’s spouse does not reference what, if any, hardships she would face were she to reside in India with her husband. Moreover, it has not been established that the applicant and his spouse would be unable to relocate to another area of India, where gainful employment could be obtained. Finally, it has not been established that the applicant’s spouse would be unable to return to the United States on a regular basis to visit her mother and/or son. It has thus not been established that the applicant’s spouse would experience extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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 U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. There is no documentation establishing that her hardship would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant’s spouse’s situation, the record does not establish that the hardship she 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.