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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



U.S. Citizenship  
and Immigration  
Services

H2

FILE: [REDACTED] Office: JACKSONVILLE, FL Date: SEP 24 2009

IN RE: [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 PETITIONER:

[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, 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 Officer in Charge, Jacksonville, Florida, and 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 last entered the United States without inspection in October 1995. He was 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 sought an immigration benefit through fraud or misrepresentation of a material fact. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks 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 spouse and children.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer in Charge* dated May 17, 2006.

On appeal, counsel for the applicant asserts that denial of admission to the applicant would result in extreme hardship to his U.S. Citizen spouse. In support of the waiver application and appeal counsel for the applicant submitted a letter from the applicant's wife, letters from banks concerning loans to the applicant and his wife, academic records for the applicant's children, and an income tax return for the applicant and his wife. The entire record was reviewed and considered in arriving at 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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. 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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a fifty-eight year-old native and citizen of India who last entered the United States in 1995. He was found to be inadmissible because he had submitted a letter providing false information about his employment experience in an attempt to obtain permanent resident status in 1976. The applicant's wife is a fifty-three year-old native of India and citizen of the United States. The applicant resides in Tallahassee, Florida with his wife and two children.

Counsel asserts that the applicant's wife would suffer extreme hardship if the applicant were denied admission to the United States. The applicant's wife states that she suffers from medical conditions, including chronic knee and back problems, for which treatment would not be available in India. *See letter from* [REDACTED] dated June 15, 2006. She further states that she owns two stores and has large outstanding loans on these businesses, and would "face tremendous financial loss" if she were forced to sell these businesses and return to India. *See letter from* [REDACTED]. She asserts that she would suffer hardship due to her length of residence in the United States and her extensive family and community ties in the United States, including membership at her temple where she performs volunteer work. She additionally states that her children have excelled in their studies and

are attending university and would suffer hardship in India because the quality of education there is much lower.

In support of these assertions she submitted letters from banks indicating that she has loans in the amount of about \$400,000 for her two stores as well as other loans. The first page of a 2005 joint income tax return indicates that the applicant and his wife had a total income of \$142,951, with income reported from various sources, including wages and salaries, business income, and rental real estate or corporations or partnerships. No W-2 forms or schedules are included in the record to specify the source of this income or establish that the applicant and his wife would be unable to generate income from their businesses or other properties if they relocated to India. Although the financial situation of the applicant's wife would likely be negatively affected if she had to sell one or more of her businesses and relocate to India, the record does establish that they would lose all of their income or be unable to support themselves financially in India. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship). Further, no information or documentation was submitted concerning conditions in India to establish that the applicant's wife would suffer financial hardship there or be denied access to medical care, and no medical evidence was submitted to support her assertions concerning her medical condition. 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)).

The applicant's wife also asserts that she would suffer hardship in India due to her length of residence in the United States and her family and community ties. The AAO notes that no documentation was submitted to establish that the applicant's wife has extensive family ties, including her brother and sister, in the United States, or that she is active in her community. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Further, although the applicant's children were born and educated in the United States and the applicant asserts that they would be denied educational opportunities in India, the AAO notes that they are now adults and one has completed and the other is pursuing an undergraduate university degree in the United States. The record does not establish that they would be unable to remain in the United States and complete their studies even if the applicant and his wife relocated to India.

The applicant's wife asserts that she would suffer financial ruin if the applicant were removed from the United States because of her various debts, including loans on her businesses and a mortgage on her home. The record does not establish, however, that the applicant's wife would be unable to support herself through employment or income from one or more of their businesses if the applicant relocated to India and she remained in the United States. Although her financial situation would likely be negatively affected by the applicant's departure from the United States, any financial impact of the loss of the applicant's income appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The evidence on the record is insufficient to establish that any emotional, physical, or financial hardship the applicant's wife would experience if he is denied admission to the United States would be other than the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act.

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.