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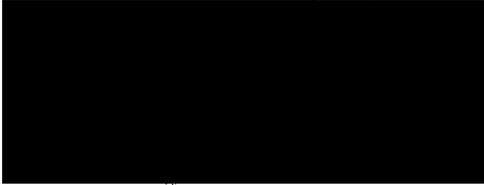
U.S. Department of Homeland Security
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U.S. Citizenship
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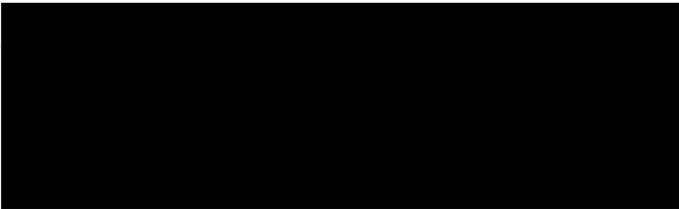
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IN RE:



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

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), New Delhi, India denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a 33-year old citizen of India, who entered the United States without inspection on February 12, 1995, returned to India in March 2000, and subsequently applied for an immigrant visa at the U.S. Embassy in New Delhi. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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, departing, and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to join his U.S. citizen (USC) wife, [REDACTED] in the United States.

The record reflects that Mr. [REDACTED] entered the United States without inspection on February 12, 1995. He resided continuously and in unlawful status in the United States until his departure in March 2000. As a result of this unlawful presence, the OIC found him to be inadmissible to the United States. *OIC's Decision*, dated March 29, 2005. The OIC also found that the applicant 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). *Id.*

On appeal, counsel asserts that Mr. [REDACTED] wife will suffer extreme hardship if his Form I-601 is denied. *Brief, dated May 12, 2005.* In addition to this brief, the record includes the following: a hardship statement from Ms. [REDACTED] dated, July 14, 2003; Ms. [REDACTED] U.S. naturalization certificate; the birth certificate of their USC son, [REDACTED] age, 7; work verification letters for Mr. [REDACTED] and Ms. [REDACTED] Ms. [REDACTED] English language certificates from Fairfax County Public Schools, dated August 26, 2001, July 29, 2002, and December 18, 2002; Ms. [REDACTED] certificate in Microsoft Word, [REDACTED], dated April 9, 2003; a note from Dr. [REDACTED] dated February 22, 2002, noting that Ms. [REDACTED] suffered from a fever; and a note from Dr. [REDACTED], dated May 30, 2003; stating that Ms. [REDACTED] was treated for diarrhea and vomiting and suffered from allergic sinusitis. The AAO reviewed the record in its entirety before reaching its decision.

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.

A section 212(a)(9)(B)(v) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Direct hardship the applicant himself and his USC child experience upon denial of admission is not considered in section 212(a)(9)(B)(v) waiver proceedings. Thus, hardship suffered by them will be considered only insofar as it results in hardship to Ms. [REDACTED]

If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez*, 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 list of non-exclusive factors relevant to determining whether an applicant 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.

“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).

As a preliminary matter, counsel asserts that the favorable factors in Ms. [REDACTED] case should be weighed against the negative factors in her case. This is incorrect. The correct legal standard is whether denial of her husband’s Form I-601 will result in extreme hardship to Ms. [REDACTED]. Only if extreme hardship is established will the favorable factors in the case be weighed against the unfavorable factors, as a matter of discretion. Section 212(i) of the Act.

Counsel asserts that just because Ms. [REDACTED] is originally from the Punjab region of India, where her spouse and child currently reside, does not mean that she will not suffer extreme hardship if she returns there to avoid separation from them. Counsel asserts that Ms. [REDACTED] has close family in the United States and very few relatives remaining in India but does not submit documentation to establish the immigration status of these

family members or statements from them detailing how she would suffer if she returned to India to join her husband and child. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, counsel has not established that moving from her biological and adopted fathers in order to reunite with her husband and son would result in extreme hardship to Ms. [REDACTED]. No objective documentation was provided to supplement Ms. [REDACTED] claim of emotional hardship. *Id.*

Ms. [REDACTED] asserts that she had to give up going to school when her husband was not allowed to return to the United States but the documentation in the record indicates that she earned certificates in English and Microsoft Word after her husband departed the United States. *See certificates dated August 26, 2001, July 29, 2002, December 18, 2002, and April 9, 2003.* It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). On appeal, neither counsel nor the applicant attempts to explain this inconsistency. Nor do they explain why not being able to continue her education results in extreme hardship to Ms Sambe.

On appeal, counsel asserts that Ms. [REDACTED] is a single mother and does not make enough money to support herself and her son and continue her education. The record, however, indicates that Ms. [REDACTED] son was sent to India to live with Mr. [REDACTED] and his family while Ms. [REDACTED] remained in the United States. The record does not contain an explanation of this inconsistency. *Id.* In addition counsel has submitted no documentation to show that Ms. [REDACTED] cannot continue to financially provide for herself in the United States while her husband and child live in India.

Counsel asserts that Ms. [REDACTED] cannot move back to India because she would be constricted by the social role imposed on her by India society. While existing social and political conditions in India are considerations in determining extreme hardship, counsel has not submitted documentation about these conditions or evidence of how these conditions would affect Ms. [REDACTED]. *Matter of Obaigbena*. In addition, counsel has not established that residing apart from her husband and son, as she has for the last five years, results in extreme hardship to Ms. [REDACTED].

Counsel asserts that Mr. [REDACTED] child is young and unable to remain in India. Counsel asserts that the child will be deprived of a good education and be subjected to poverty if he remains to India. As mentioned above, direct hardship to an applicant's child is not considered in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. When a qualifying relative is alone in the United States while the other parent is in the home country caring for the child, it is reasonable to expect that the child's emotional state due to separation from that parent will have a significant impact on the qualifying relative. Yet counsel has not established that the applicant's wife has experienced consequences that are

sufficiently different or more severe than those commonly experienced by families who are separated as a result of inadmissibility.

Although it is clear that his wife suffers emotionally due to her separation from her spouse and child, she faces the same decision that confronts others in her situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on Mr. [REDACTED] wife, while difficult, does not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Mr. [REDACTED] spouse would face extreme hardship if Mr. [REDACTED] is refused admission and his spouse chooses to remain in the United States or if she chooses to join him in India. 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) (upholding the BIA's decision in a case which addressed, *inter alia*, claims of emotional and financial hardship that Mr. [REDACTED] deportation would cause to his spouse and children). *Hassan v. INS* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS, supra*, at 468.

In this case, although the applicant's wife will endure emotional hardship if she remains in the United States separated from the applicant, or if she joins him in India and is separated from her family in the United States, their situation, based on the limited documentation in the record, does not rise to the level of extreme hardship. The record does not contain sufficient evidence to show that the hardship she faces rises beyond the common results of inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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)(v) 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.