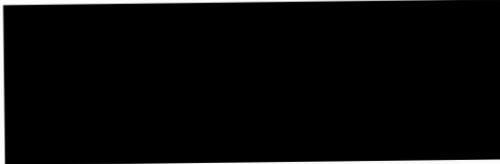




U.S. Citizenship
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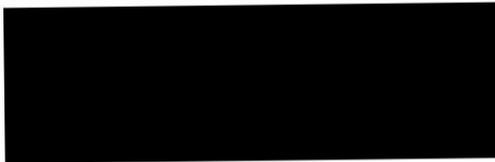
FILE: [REDACTED] Office: NEW DELHI

Date: NOV 14 2006

IN RE: [REDACTED]

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) in 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 OIC found the applicant, [REDACTED], a 70-year old native and citizen of India, to be inadmissible to the United States pursuant to section 212(a)(9)(B), 8 U.S.C. § 1182(a)(9)(B), for having accrued more than one year of unlawful presence in the United States, departing, and seeking readmission within 10 years of such departure. In order to join his lawful permanent resident (LPR) wife, [REDACTED] (Mrs. [REDACTED] in the United States, the applicant seeks a waiver of inadmissibility under section (212)(a)(9)(B)(v) of the Act, 8. U.S.C. § 1182(a)(9)(B)(v).

The record reflects that Mr. [REDACTED] entered the United States as a visitor in 1995 and remained until 2002. He applied for an immigrant visa at the U.S. Embassy in New Delhi on January 22, 2005. As a result of more than one year of unlawful presence, the OIC found him to be inadmissible to the United States. *OIC's Decision*, dated March 28, 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 April 20, 2005.*

In addition to the above mentioned brief, the record includes a statement from Mrs. [REDACTED], dated June 30, 2004; a statement from his adult U.S. citizen (USC) daughter, [REDACTED], a work verification letter for [REDACTED], proof of [REDACTED] home ownership; a statement from Mr. [REDACTED], a statement from Mr. [REDACTED] son, Sukhbir Singh, a citizen of India residing in India; and several articles relating to the state of medical care in rural India. 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 USC or LPR spouse or parent of the applicant. Hardship to the applicant

himself and to his USC children is not considered under the statute, except in relation to how it affects the qualifying relative, in this case, his LPR wife. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) 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).

Counsel asserts that Mrs. [REDACTED] would suffer extreme hardship if she had to return to India due to her medical conditions. Counsel asserts that Mrs. [REDACTED] medical conditions require close daily monitoring and that she needs to see the doctor every month for blood tests to prevent stroke. The documentation submitted does not support this assertion. The only objective medical documentation submitted is a handwritten note from Dr. [REDACTED] dated June 25, 2004. Parts of the note are illegible but it appears to state that Mrs. [REDACTED] suffers from high blood pressure and has been advised to avoid exertion and emotional stress. Two pages of additional notes are attached to this note, but are completely illegible. The record does not indicate when Mrs. [REDACTED] developed high blood pressure and whether she received treatment for it in India before coming to the United States in 2004. Dr. [REDACTED] did not address whether returning to India would have an affect on Mrs. [REDACTED] one way or another.

Counsel asserts that Mrs. [REDACTED] could not receive the medical attention necessary to keep her high blood pressure under control if she moved back to India. The documentation submitted to support this assertion refers to the poor in rural, isolated areas of India. The AAO recognizes that there is limited availability of quality medical care in rural India, but counsel has not submitted evidence related directly to Mrs. [REDACTED] and her family that would establish that could not get her to competent medical facilities in India, if and when she needed them, or to pay for the treatment she needs.

Counsel asserts that Mrs. [REDACTED] would suffer extreme psychological and emotional hardship if she had to return to India because she was unable to be with her daughter [REDACTED] in the past when [REDACTED] needed her. Other than her own brief statement, there is nothing in the record to show any psychological hardship Mrs. [REDACTED] would suffer if Mr. [REDACTED] were denied admission to the United States beyond what is normally associated with family separation. Although it is clear that Mrs. [REDACTED] would suffer emotionally, if she remains in the United States, separated from her husband, or if she returned to India to join her husband and was separated from her daughter, the couple faces the same decision that confronts others in their 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 or relocation on Mrs. [REDACTED] while difficult, would 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to 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.