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U.S. Citizenship
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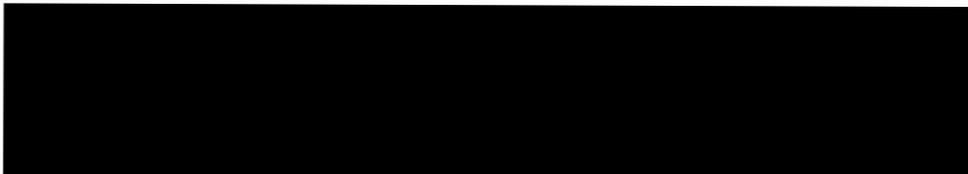
Date **APR 28 2008**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality 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 waiver application was denied by the Officer-in-Charge (OIC), New Delhi, India, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of India, was found inadmissible to the United States under 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. The applicant is the spouse of a United States citizen, and the son of lawful permanent residents or citizens of the United States,¹ and 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 return to the United States and rejoin his wife and children.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that that applicant's wife, children, and parents would suffer extreme hardship if the applicant is required to remain in India. The entire record was reviewed and considered in rendering a decision on the appeal.

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

¹ The applicant submits no documentation that verifies the citizenship status of his parents. 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)).

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that he attempted to enter the United States, without inspection, in 1994. He was ordered deported from the United States on July 14, 1995, but he did not depart until August 2003. The applicant is now seeking admission within ten years of his August 2003 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year, from April 1, 1997 until his departure in 2003. The applicant does not contest the director's finding of inadmissibility. Rather, he is filing for a waiver of his inadmissibility.

The record contains several references to the hardship that the applicant's United States citizen children will suffer if the applicant is refused admission into the United States. However, section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Congress does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's wife and his parents are the only qualifying relatives, and hardship that the applicant or the couple's children will face cannot be considered, except as it may affect the applicant's wife or parents.

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). 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

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 alien 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. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant's wife is a thirty-three-year-old citizen of the United States. She and the applicant have been married since February 8, 2001 and have three children, all of whom are United States citizens.

In her May 4, 2006 letter in support of the waiver application, previous counsel stated that the family has suffered extreme hardship as a result of the applicant's absence; that the applicant's grandfather² was diagnosed with lung cancer and the applicant's wife has had to assume responsibility for him; that the applicant's wife cannot join the applicant in India because she must care for the applicant's grandfather; that the couple's children have suffered; and that the applicant's wife has no source of income, as she is unemployed.

In his January 16, 2006 statement, the applicant explains that he entered the United States in 1994; that he married his wife in 2001; and that he returned to India, via voluntary departure, in August 2003.

The applicant's wife submits two statements. In the first, dated February 3, 2006, she states that she has lived in the United States since 1996; that she works in a laundromat; that her mother watches her children while she works; and that she is overly stressed and needs the applicant's help. In her May 2, 2006, the applicant's wife states that it is very hard to work and raise two children; that she has no income; that she had to sell her business so that she could assist her grandfather, who had lung cancer, with his chemotherapy, as he does not speak English well or drive; and that she must remain in the United States to care for her grandfather, as he cannot seek comparable treatment in India.

The record also contains a letter from the applicant's wife's grandfather, dated May 2, 2006. He states that he is seventy-five years old; that he speaks little English; that he had lung cancer; that he underwent daily treatments of chemotherapy and radiation for over six months; that his granddaughter, the applicant's wife, took him to his treatments; that he needs the applicant to help him with his treatments and translate everything;

² The record is unclear as to whether it is the applicant's grandfather, or the applicant's wife's grandfather, who required medical treatment for lung cancer. The applicant's wife states that it is her own grandfather who suffered lung cancer. He also referred to himself as her grandfather. However, the hospital and both current and previous counsel state that it was the applicant's own grandfather who suffered from lung cancer. It is incumbent upon the petitioner 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).

that he has been told they have found cancer again; and that she needs the applicant to help her raise her children. A May 1, 2006 letter from the Lakeland Regional Cancer Center confirms the applicant's wife's grandfather's diagnosis.

The record also contains an undated letter from [REDACTED] a family friend, who states that the applicant's absence has caused hardship to his wife, as she needs him to help with the family and their home.

The record also contains a letter, dated April 25, 2006, from Lakeland Volunteers in Medicine, which states that the applicant's father is a "patient in good standing."

In his September 27, 2006 appellate brief, counsel states that the OIC did not properly consider all factors regarding the hardship faced by the applicant's wife, children, and parents; that the applicant's father lives with the applicant's wife; that the applicant's wife cannot return to India because of her children's health and education; that the applicant's wife visited him in India for two months and two of the children became ill and had to make several trips to a hospital; that the applicant's parents and wife are suffering extreme hardship regarding their health and finances; that the applicant's wife has lived in the United States over ten years, and that it would be very difficult for her to begin anew in India; that the applicant's wife has fallen into depression; that the applicant's mother, father, brothers, and sisters are all either citizens or lawful permanent residents of the United States; and that the applicant's wife has an extensive family network in the United States.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

In the instant case, the applicant is required to demonstrate that his wife or parents would face extreme hardship in the event the applicant is required to remain in India, regardless of whether she joins him in India or remains in Florida without him. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 wife or parents will face extreme hardship if the applicant is refused admission. First, the AAO notes that there is no evidence in the record to indicate that the applicant's parents would suffer hardship of any type if he is required to remain in India. 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 parents were not mentioned as qualifying relatives until the appeal was filed.

Nor is there any evidence in the record to support counsel's assertions that the couple's daughters became sick in India and had to make several trips to the hospital or that the applicant's wife is suffering from depression. Again, simply 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)). 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).

The record does not demonstrate that the applicant's wife faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. The hardships enumerated in the record are not unique to the applicant's wife's case. Rather, they are faced by most people facing the deportation of a spouse. Moreover, the AAO notes the presence of an extended family network in the United States, and the applicant has not explained why this "extensive family network" is unable to assist his wife in caring for the children or assisting her in transporting her grandfather to his medical appointments. Nor has the applicant explained why his own brothers and sisters, all of whom area claimed to be citizens or lawful permanent residents of the United States, cannot assist his wife in caring for his own parents. Although CIS is not insensitive to her situation, the financial strain of visiting the applicant in India, the stress associated with maintaining two separate households, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

Nor has the applicant established that his wife would face extreme hardship if she joined him in India: again, the record fails to demonstrate that he would face hardship beyond that normally faced by others in his situation. Diminished standards of living, separation from family, and cultural adjustment are to be expected in such a situation. No evidence was submitted, or claims made, to establish that she would experience financial or emotional hardship that would rise to the level of "extreme" as contemplated by statute and case law in such a situation. That the applicant's wife was born and raised in India, and had only lived in the United States for ten years at the time of the appeal, all work to make the adjustment she would face easier than that of others in her situation.

In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. While the prospect of separation 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and

beyond the normal, expected hardship involved in such cases. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant's wife would suffer hardship beyond that normally expected upon the inadmissibility of a spouse.

Finally, the AAO turns to counsel's citation of several cases on appeal. Counsel cites to *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), and states that hardship to the applicant's citizen children must be given careful consideration. However, counsel's citation is misplaced, as children are not qualifying relatives in section 212(a)(9)(B)(v) waiver cases. Counsel also cites to *Matter of Arai*, 13 I&N Dec. 494 (BIA 1970), and states that favorable factors such as family ties, hardships, and length of residence in the United States should be considered as countervailing factors meriting favorable exercise of administrative discretion. However, counsel's citation is again misplaced. *Matter of Arai* involved an adjustment of status case, not a waiver case. In section 212(a)(9)(B)(v) waiver cases, the AAO may not exercise administrative discretion until extreme hardship to a qualifying family member has been established. In this case, extreme hardship has not been established.

Finally, the AAO turns to counsel's citation of *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001), a section 240A(b) of the Act, 8 C.F.R. § 240.20, cancellation of removal case, the BIA stated the following:

We do find it appropriate and useful to look to the factors that we have considered in the past in assessing "extreme hardship" for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing "exceptional and extremely unusual hardship" are essentially the same as those that have been considered for many years in assessing "extreme hardship," but they must be weighted according to the higher standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

(Publication page references not available on Westlaw). (section III of decision).

The factors cited by counsel, which derive from *Matter of Anderson*, such as age, length of residence, immigration history, and position in the community can only be considered as to how those factors contribute to the hardship faced by the qualifying relative, in this case the applicant's spouse and parents, and not the applicant himself. If, in a particular case, any of the above factors are not present or not relevant to that determination, the law provides that they need not be considered. In the instant case, and in accordance with the preceding discussion, the applicant has failed to establish that his wife or parents would suffer extreme hardship if they remain in the United States without the applicant.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his wife or parents would suffer hardship that is unusual or beyond that normally

expected upon the inadmissibility or removal of a spouse or adult son. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.