

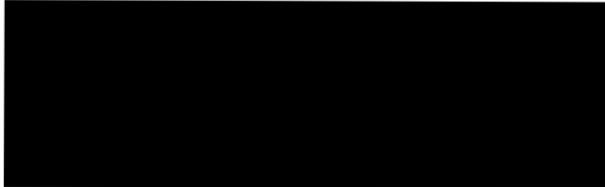
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Services

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FILE:

Office: NEW DELHI, INDIA

Date: DEC 23 2008

IN RE: Applicant:



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.

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 Officer in Charge, New Delhi, India and appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of India, entered the United States in May 1995 as a nonimmigrant visitor for pleasure, with permission to remain until June 11, 1995, yet remained until June 2004, when he departed the United States. The applicant accrued unlawful presence from November 7, 2000, when he turned 18 years of age¹ until June 2004. The applicant was thus found to be 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. He 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 be able to reside in the United States with his U.S. citizen spouse and lawful permanent resident parents.

The officer in charge 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 Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated July 13, 2006.

In support of the appeal, counsel for the applicant submitted a brief, dated September 1, 2006. 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:

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.

¹ Section 212(a)(9)(B) of the Acts states, in pertinent part:

(iii) Exceptions—

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

....

(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...

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. In the present case, the applicant's U.S. citizen spouse and lawful permanent resident parents are the only qualifying relatives, and hardship to the applicant and/or extended family members cannot be considered, except as it may affect the applicant's spouse and/or parents.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The 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.

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 first asserts that the applicant's lawful permanent resident parents will suffer extreme hardship if the applicant's inadmissibility waiver is not granted. As counsel states,

Bunty's [the applicant's] LPR Father...is 58 years old. He has been living in the US since 05/21/1995.... He had hoped and continue to hope that Bunty would be close to his family and that Bunty would provide assistance to him as he is near retirement and in taking care of Bunty's ailing mother.... Not only he would be directly affected and would suffer an irreparable harm by not having his son next to him, his wife's illness

and loss of companionship of the son would further aggravate this extreme hardship....

Bunty's LPR mother...is over 51 years old. She has been detected and has been suffering and treated with the history of coronary artery disease with multiple PCI, congestive heart failure. She is a patient with nonischemic cardiomyopathy, functional class II-III who is on aggressive medical therapy....

Brief in Support of Waiver, dated October 21, 2005.

To begin, although counsel has provided a letter from the applicant's mother's treating physician detailing her afflictions, the AAO notes that no medical documentation was provided with the appeal outlining in detail the applicant's mother's current medical condition(s), the gravity of the situation, the short and long-term treatment plan, what type of assistance the applicant's mother needs from the applicant specifically and what hardships she faces due to the applicant's absence. Said letter, written in October 2005, briefly and generally states that the applicant's mother "will benefit of close system from family members, as well as further proper care of her medications, her activities of daily living, as well as further encouragement for maintaining an active rehabilitation program..." *Letter from [REDACTED] M.D., Ph.D., Methodist DeBakey Cardiology Associates*, dated October 11, 2005. [REDACTED] letter fails to establish that the applicant's mother's continued medical care and survival directly correlate to the applicant's physical presence in the United States.

Moreover, the record indicates that the applicant's mother's husband and daughter reside with her and in addition, her brother and sister live in the United States; no documentation has been provided to establish that they are unable to assist the applicant's mother should the need arise, physically, financially and/or emotionally, and that due to this inability, the applicant's mother is and/or will experience extreme hardship. Finally, no objective evidence is provided to corroborate counsel's statements regarding the applicant's parent's mental state, such as statements from a professional in the mental health field documenting that the applicant's parents suffer and/or will suffer emotional and/or psychological hardship due to the applicant's inability to reside in the United States. 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 Obaighbena*, 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). It has not been established that the applicant's lawful permanent resident parents' physical, emotional and/or psychological hardship is any different from other families separated as a result of immigration violations.

As for the brief reference to financial hardship made by counsel, the AAO notes that 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.”); *Shooshtary 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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record contains no corroborating evidence to establish that the applicant's continued inadmissibility would cause the applicant's parents extreme financial hardship. No documentary evidence has been provided regarding the applicant's parents' current financial situation and their needs, to establish that without the applicant's continued financial support, their hardship will be extreme. Moreover, counsel has not detailed why the applicant is unable to obtain gainful employment in India that would allow him to assist his parents in the United States financially should the need arise. Finally, as previously noted, the applicant's parents have several relatives who reside in the United States, including siblings and a daughter; no evidence has been provided by counsel to explain why said relatives would be unable to assist the applicant's parents with respect to their financial care, should the need arise. The applicant has thus failed to show that his continued absence will cause extreme financial hardship to the applicant's parents.

The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. Thus, the AAO concludes that it has not been established that the applicant's lawful permanent resident parents will suffer extreme hardship were they to remain in the United States while the applicant resides abroad due to his inadmissibility.

Counsel further discusses the hardships the applicant's U.S. citizen spouse will suffer were the applicant's inadmissibility waiver denied. As asserted by counsel,

Sameeta [the applicant's spouse] was born in Pakistan. Later she moved to US at the age of 4 years and has been in the United States since then with her USC Brother Noman and parents. She has [sic] been United States citizen and her Father...Mother...her aunts, uncles and to relatives she may not even know all live in the United States and in very close proximity....

USC Spouse has been enrolled in school, then college and has been working to support her family and self....

Id. at 4.

No evidence has been provided by counsel that outlines the specific hardships the applicant's spouse will face were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In fact, the AAO notes that no statements have been provided by the applicant's qualifying relatives that outline, in detail, the hardships they would encounter were the applicant to remain abroad. Moreover, the record indicates that the applicant's spouse has numerous relatives that reside in the United States who could presumably assist her, emotionally and/or financially, should the need arise. Finally, it has not been established that the applicant's wife is unable to travel to India on a regular basis to visit her spouse. As previously stated, assertions without supporting documentary evidence does not suffice to establish extreme hardship. The AAO thus concludes that while the applicant's spouse may need to make alternate arrangements with respect to her care were the applicant unable to reside in the United States due to his inadmissibility, it has not been established that such alternate arrangements would cause her extreme hardship.

Although the depth of concern and anxiety over the applicant's immigration status 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 and familial and emotional bonds exist. 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 notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to the applicant's lawful permanent resident parents, counsel asserts the following hardships:

He [the applicant's father] would not be able to move to India as all his family resides here and due to other conditions in India as discussed below. He would not also be able to provide the medical care Bunty's [the applicant's] mother needs in India due to same factors and due to his property, financial strengths and roots in the USA....

Mother is not able to leave her husband, daughter and then her medical condition does not even allow her make long trips. She is an LPR and intends to reside in the United States....

Her medical condition does not allow her to make long trips and stay away from her family that includes her sister and brother in the US.

Id. at 5-6.

As for the applicant's U.S. citizen spouse, counsel references the following hardships:

. [redacted] [the applicant's] U.S. citizen spouse has no family ties in India.... The conditions in India are not good for religious minorities. [redacted] is a Muslim. The overwhelming majority in India are Hindu and all aspects of the government were controlled....

Brief in Support of Appeal, dated September 1, 2006.

In addition, counsel notes the problematic history between Pakistan, the applicant's spouse's birthplace, and India, the applicant's birthplace, and the concerns for the applicant's spouse's safety were she to relocate to India.

Although counsel has provided general statistical information about country conditions in his brief, the information provided is general in nature, unsupported by documentation, and does not outline the specific hardships the applicant's spouse and/or parents would encounter were they to reside in India with the applicant. As previously noted, the unsupported assertions of counsel do not constitute evidence.

Further, no documentation has been provided that objectively establishes that the applicant's parents would suffer extreme hardship were they to return to India, their home country. 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)). Moreover, no corroborating documentation has been provided to establish that the applicant's mother is unable to travel to India on a regular basis to visit the applicant.

Finally, with respect to the applicant's spouse, it has not been established that the applicant's spouse would suffer extreme hardship were she to relocate to India to reside with the applicant. In fact, the record establishes that the applicant's spouse has made a number of trips to India to visit the applicant, presumably without incident. Moreover, it has not been established that the applicant's spouse's family would be unable to travel abroad to visit the applicant's spouse on a regular basis.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his lawful permanent resident parents and/or U.S. citizen spouse would suffer extreme hardship if he were not permitted to return to the United States, and moreover, the applicant has failed to show that his lawful permanent resident parents and/or U.S. citizen spouse would suffer extreme hardship were they to relocate abroad to reside with the applicant. The record demonstrates that the applicant's qualifying relatives face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son/spouse is refused

admission. 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) 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.