

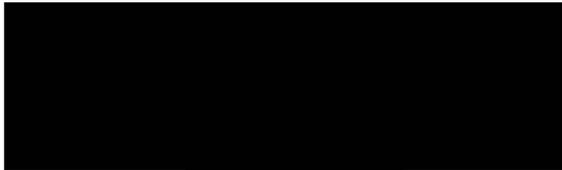
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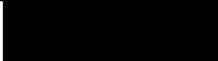
U.S. Citizenship
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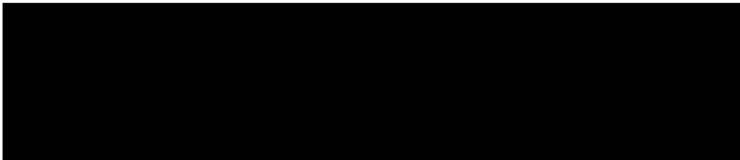
IN RE:



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), and Application for Permission to Reapply for Admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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 and application for permission to reapply were denied in separate decisions by the District Director, Detroit, Michigan. The applicant filed a single motion to reconsider both decisions. The district director affirmed the previous decisions, and the matter 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more subsequent to April 1, 1997. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse. He also seeks permission to reapply for admission into the United States after having been removed under section 212(a)(9)(A)iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The record reflects that the applicant entered the United States without inspection on or about November 24, 1993. The applicant was apprehended on November 27, 1993 and later released on bond pending deportation proceedings on June 20, 1994. The applicant filed an application for asylum on April 8, 1994. When the applicant failed to appear at the scheduled June 20, 1994 hearing, the bond was declared breached and the applicant was ordered deported. The applicant's asylum application was subsequently denied on July 24, 1995, and the applicant was again referred to deportation proceedings. On December 18, 1995, the applicant and his spouse were married in the United States. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on February 28, 1996, and the petition was approved on October 9, 1996. On April 19, 1996, after the applicant had failed to appear at a hearing before an immigration judge, he was again ordered deported. On July 12, 1996, a warrant of deportation was issued against the applicant for him to be deported on August 13, 1996. On August 5, 1996, the applicant filed a motion to reopen his deportation proceedings. The motion was granted and at a subsequent hearing, the applicant was granted voluntary departure until June 15, 1998. However, the applicant failed to depart the United States and a warrant for his removal was issued on July 25, 1998. The applicant failed to appear for his scheduled removal on September 15, 1998. On September 30, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the March 6, 1996 approval of the Form I-130 petition. When the applicant appeared before the Service on June 17, 2002, the outstanding warrants against him were executed. The applicant was removed from the United States on June 26, 2002.

On or before October 3, 2002, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation (Form I-212) and an Application for Waiver of Grounds of Excludability (Form I-601) with the Detroit District Office of the legacy Immigration and Naturalization Service (INS). Citing various negative factors, including the applicant's apparent disregard for the immigration laws, the district director denied the applicant's Form I-212 application. *See Decision of District Director, Detroit, Denying Form I-212*, dated March 25, 2003. The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 waiver application accordingly. *See Decision of District Director, Detroit, Denying Form I-601*, dated March 25, 2003. The applicant filed a motion to reconsider both decisions, and the motion was denied on July 8, 2005. *See Decision of District Director, Detroit*, dated July 8, 2005. On August 8, 2005, the applicant appealed the July 8, 2005 decision to the AAO. To date, no decision has been made on this appeal.

On May 22, 2006, the applicant filed another Form I-212 application and another Form I-601 application with the U.S. Consulate General in Mumbai, India. The Officer in Charge (OIC) at the U.S. Embassy in New Delhi, India concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 waiver application accordingly. *Decision of OIC, New Delhi, India, Denying Form I-601*, dated November 21, 2006. Citing the applicant's failure to obtain a waiver of the grounds of inadmissibility, the OIC concluded that approval of the Form I-212 application would serve no purpose and denied the application accordingly. *Decision of OIC, New Delhi, India, Denying Form I-212*, dated November 21, 2006. These decisions have not been appealed.

The matter before the AAO on appeal is the district director's decision of July 8, 2005 denying the applicant's motion to reconsider the district director's decisions of March 25, 2003 denying the applicant's Form I-212 and Form I-601 applications. As noted in the OIC's decision, approval of the applicant's Form I-212 application serves no purpose unless the applicant is also granted a waiver of inadmissibility. Consequently, the AAO first considers the district director's decision to deny the applicant's waiver application. In so doing, the AAO will consider all the evidence in the record, including evidence submitted in support of the waiver application filed subsequent to the appeal.

On appeal, counsel contends that the decision "demonstrates a cavalier attitude toward the separation of families and the affiliated hardship that it brings." *See Form I-290B*, dated August 5, 2005. Counsel states that the decision fails to consider the impact of relocation to India on the applicant's children. *Id. (attachment)*. Counsel asserts that the applicant's spouse and children will not have the same quality of life in India, and that the separation of the applicant from his children will be detrimental to them. *Id.* It is noted that in a statement dated May 24, 2006, the applicant indicates that his children have been residing with him in India, while his wife remains in the United States. Counsel contends that the applicant's attempted entry without inspection and subsequent failure to appear should not be held against him "because one can assume that when the Immigration Judge . . . reopened the case . . . for legally sufficient cause." *Form I-290B (attachment)*. Counsel also contends that the applicant's failure to depart after being granted voluntary departure, or to report for deportation on September 15, 1998 are not negative factors, as the applicant had in good faith requested an extension of time to stay and "was waiting for an answer from INS." *Id.* Counsel asserts that the applicant has at no time hid from the authorities, but has been "working, paying taxes, and taking care of his family." *Id.*

The record contains, among other documents, a statement from the applicant signed May 24, 2006, a statement from the applicant's spouse dated May 4, 2006, a statement from the applicant's spouse dated July 14, 2002, health insurance documents, automobile insurance documents, letters from the applicant's former employer, newspaper articles showing the applicant's participation in a bicycle tour for peace, various certificates showing the applicant's completion of training programs, identification and other personal documents. The entire record has been reviewed in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or
- (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 [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.

The record reflects that the applicant entered the United States without inspection in 1993. The applicant was granted voluntary departure until June 15, 1998, but remained in the United States until he was removed on June 26, 2002. The applicant is now seeking readmission to the United States. Thus, the applicant accrued unlawful presence from June 16, 1998 to June 26, 2002, a period in excess of one year, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 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).

U.S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In her statement dated May 4, 2006, the applicant’s spouse states that she is working part-time and “it is very difficult for me to pay rent.” She states that she is “totally paralyzed and heartbroken” without her husband and children, and that her children deeply miss her. In his statement signed May 24, 2006, the applicant indicates that his sons now live with him in India and states that his wife is suffering mental and physical agony because of their separation. He asserts that it is hard for his wife to work because she lives with her aged parents and is “always in depression and feeling loneliness.”

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 spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s spouse suffers emotionally as a result of separation from the applicant, and that her standard of living has changed. However, it is noted that the applicant has not submitted any evidence of the financial hardship claimed beyond his and his wife’s brief statements. Although the statements by the applicant and his spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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 hardship described by the applicant's spouse is the typical result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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.

The AAO also notes that the applicant was in deportation proceedings at the time he and his spouse were married, a factor that *Cervantes-Gonzalez* court found to undermine a claim of extreme hardship. *See 22 I. & N. Dec. at 566-567*. The court stated:

[I]t goes to the respondent's wife's expectations at the time they were wed. Indeed she was aware that she may have to face the decision of parting from her husband or following him to Mexico in the even he was ordered deported. In the latter scenario, the respondent's wife was also aware that a move to Mexico would separate her from her family in California. We find this to undermine the respondent's argument that his wife will suffer extreme hardship if he is deported.

Id.

Finally, the applicant has not asserted, or submitted evidence to prove, that his spouse would suffer extreme hardship if she relocated to India to live with him and their children.

In this case, the record does not contain sufficient evidence to show that the 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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver of inadmissibility or should be granted permission to reapply, as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests 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.