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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]

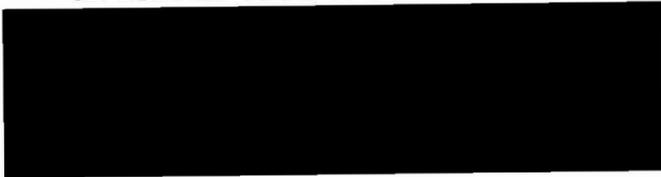
Office: NEW DELHI, INDIA

Date: JUN 03 2008

IN RE: Applicant: [REDACTED]

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 Acting Field Office Director, New Delhi, India and appealed to Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of India. The record indicates that he entered the United States as a B-2, Visitor for Pleasure, in May 2001 with an authorized stay until November 5, 2001. The applicant subsequently obtained an extension of stay, until May 5, 2002. However, the applicant remained without authorization until January 2005, when he voluntarily departed the United States. 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.

The acting field office director 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 Acting Field Office Director*, dated October 29, 2007.

In support of the appeal, counsel submitted Form I-290B, Notice of Appeal, and an attachment with referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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.

....

(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...

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

The applicant's spouse states that she is suffering emotional and psychological hardship due to the applicant's inadmissibility. As stated by the applicant's spouse:

...At times I feel so helpless that I want to cry because my husband [the applicant] whom I love from the bottom of my heart is seven seas apart from me....

...It is one of the hardest phases to go thru when someone you want to be with is not with u [sic] when u [sic] actually need that emotional support to get by the hard times. There have been times when I just cannot take it and I breakdown but that's when I call him and talk to him over the phone his voice itself makes me get back on my feet and move on as I have the hope that he will come back and we will be together....

...My husband makes me feel good about myself he makes me complete as a person from the outside and from within.

I love my husband like I have never loved anyone and I have a vision and I see him being with me and both of us leading a happy married live [sic] together and having a family in the future.

Letter from [REDACTED]

In support of the applicant's spouse's statements, the applicant provides a letter from [REDACTED], PhD, Clinical Psychologist. As [REDACTED] states,

...This is a 24 year-old woman [the applicant's spouse] who has been married to [REDACTED] [the applicant] for two years and three months. Due to her husband's immigration status, it was necessary for him to return to India to await the necessary documents prior to assuming residency in the U.S. with his wife. As a consequence of this separation, Ms. [REDACTED] reports increased tearfulness, insomnia, poor appetite and weight loss of 30 pounds over a six-month period. These symptoms are consistent with a diagnosis of Major Depressive Disorder

brought on by the extended separation from her husband and uncertainty regarding their eventual reunification....

Letter from *Ph.D., Clinical Psychologist.*

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the depressive disorder referenced in [REDACTED]'s letter. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Although the depth of concern and anxiety over the applicant's inadmissibility 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 thus the 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. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The applicant's spouse further contends that she is suffering financial hardship due to the applicant's absence. As stated by the applicant's spouse: "If my husband comes back it would make me financially stable and together both of our incomes would help us live a better life as it would lessen the burden off my back...." *Supra* at 1.

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.").

In this case, no financial documentation has been provided to establish the applicant's and his spouse's current economic situation, to corroborate that the applicant's spouse is suffering extreme financial hardship due to the applicant's inadmissibility. Nor has it been established that the applicant is unable to obtain gainful employment in India, thereby assisting with the maintenance of the U.S. household. While the applicant's spouse may need to make adjustments with respect to her financial situation while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains 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. The AAO concludes that based on the evidence provided, it has not been established that the applicant's spouse is suffering extreme emotional, psychological and/or financial hardship due to the applicant's absence.

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. In this case, the applicant has not asserted any reasons why his spouse is unable to relocate to India.

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 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 U.S. citizen spouse would suffer extreme hardship were she to relocate to India to accompany the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or 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.