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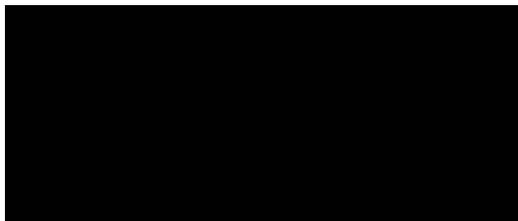
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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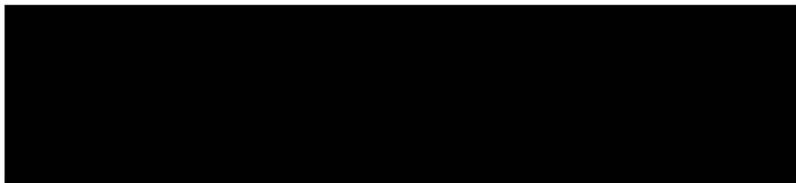
FILE: [Redacted] Office: NEW DELHI, INDIA

Date **MAY 06 2008**

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

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, New Delhi, India, denied the waiver application and a subsequent appeal was rejected by the Administrative Appeals Office (AAO) as untimely filed. The AAO will reopen the matter. The appeal will be dismissed.

On September 28, 2007, the AAO rejected the applicant's appeal as untimely filed. Documentation filed by counsel on November 29, 2007, indicates that the applicant's appeal was timely filed. The AAO is therefore reopening the matter *sua sponte*.

The applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for procuring admission to the United States by fraud or willful misrepresentation and for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is the spouse of a naturalized U.S. citizen. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to reside in the United States with his spouse.

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 Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated January 20, 2006.

The record reflects that, on August 14, 1995, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative (Form I-130) purportedly filed by the applicant's U.S. citizen spouse, [REDACTED], whom he claimed to have married on July 21, 1994. On August 9, 1996, the Form I-485 and Form I-130 were denied because the U.S. Birth Certificate of [REDACTED] and the Marriage Certificate of the applicant and [REDACTED] submitted in support of the Form I-485 and Form I-130 were fraudulent. The record does not indicate that the applicant was ever married to [REDACTED].¹ On October 16, 2001, the applicant was apprehended by immigration officers and placed into immigration proceedings. On October 17, 2001, the applicant testified that, on November 25, 1995, he entered the United States by presenting an Indian passport and U.S. nonimmigrant visa bearing the name [REDACTED].” On December 3, 2001, the immigration judge granted the applicant voluntary departure until December 28, 2001. On December 30, 2001, the applicant departed the United States and returned to India, where he has since resided.

On January 16, 2003, the applicant married his spouse, [REDACTED] in India. On July 10, 2003, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on March 29, 2004. On August 18, 2004, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his spouse.

On appeal, counsel contends that the additional evidence submitted on appeal supports a finding of extreme hardship to the applicant's spouse. *See Counsel's Brief*, dated April 5, 2006. In support of his contentions, counsel submits the referenced brief, affidavits, medical documentation, educational and financial

¹ The AAO notes that on the applicant's Form G-325A, Biographical Information, he lists a previous marriage to [REDACTED], which took place in 1996.

documentation, and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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.

The officer in charge based the finding of inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(v) of the Act on the applicant's testimony and documentation establishing the applicant's fraud in obtaining admission to the United States in 1995 and his unlawful presence in the United States. On appeal, counsel does not contest the officer in charge's determination of inadmissibility.

The AAO also notes that the record establishes that, in 1995, the applicant attempted to obtain immigration benefits based on a fraudulent marriage to a U.S. citizen. As previously noted, the birth certificate for the applicant's alleged spouse, as well as their marriage certificate, were found to be fraudulent. Accordingly, the applicant is also inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for his attempt to gain lawful permanent resident status through fraud.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) or 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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. 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 has held:

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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that [REDACTED] is a native of India who became a conditional permanent resident in 1996, a lawful permanent resident in 2001 and a naturalized U.S. citizen in 2003. [REDACTED] parents, [REDACTED] and [REDACTED], are natives and citizens of India who became lawful

permanent residents in 2004. The applicant and [REDACTED] do not have any children together. The record indicates that the applicant and [REDACTED] are in their 30's, [REDACTED] is in his 60's and [REDACTED] is in her 50's.

On appeal, counsel asserts that the applicant failed to provide sufficient documentation to support his waiver application because he was not represented by counsel. However, the record reflects that the applicant was represented by counsel at the time he filed the Form I-601 and that the psychological evaluation submitted with the Form I-601 was obtained by that representative.

[REDACTED] in her affidavit, states that she is a well-respected faculty member of the University Delaware and is in the process of applying for her Ph.D. in applied mathematics. She states that a grant of the applicant's waiver will enable her to reunite with her husband, keep her family together and provide her with the ability to stay in the United States and pursue her career. She states that without the applicant her future and welfare are meaningless to her. She states that the applicant allowed her to reside with him and helped her financially after she divorced her first husband and was there for her when she needed someone the most. She states that, after the applicant returned to India, she thought she was going to lose a life partner and went into a deep depression and felt very alone. She states that she went to see a psychologist who agreed that she was suffering from loneliness and depression.

[REDACTED] and [REDACTED], in their affidavits, state that if [REDACTED] stays in the United States without the applicant she will have to live life without her life partner. They state that this situation is not acceptable in their Hindu community or to them. They state that, if the applicant were permitted to return to the United States, he will be able to assist their daughter in caring for them and sharing the financial burden, which would greatly benefit the family and enable them to live a proper life. They state that when the applicant left the United States, [REDACTED] became very depressed and her love for her work also deteriorated.

A letter from the Delaware Eye Care Center and a face sheet from Delaware Primary Care indicate that Mrs. [REDACTED] had diabetes for the past 15 years and she is currently insulin dependent. These materials also indicate that she has benign hypertension, which is under control, and that her diabetes has improved. They further establish that [REDACTED] has been successfully treated for diabetic retinopathy and, while she has cataracts, **surgery is not suggested at this time.** There is no documentary evidence in the record that indicates that Mrs. [REDACTED]'s medical condition or any health concerns affecting [REDACTED] restrict their ability to function on a daily basis or that they require assistance or care from [REDACTED].

A psychological evaluation, prepared by [REDACTED] Ph.D. of Psychological Service Associates, P.A., indicates that [REDACTED] was referred for an assessment by prior counsel. [REDACTED] states that, at her interview, [REDACTED] described a close, mutually affectionate, healthy relationship between her and her husband and finds her life much more difficult and taxing as a result of her separation from the applicant. He states that her grades in graduate school have been declining and, while she continues to work, she finds it difficult to focus on her responsibilities. He states that although her appetite has remained steady she has lost ten pounds and suffers from nightmares, apprehension and worry that interrupt her sleep. [REDACTED] concludes that [REDACTED] misses her husband, feels lonely and regularly experiences symptoms of depression. It states that as long as the applicant remains in India, [REDACTED] will be deprived of her husband's presence and affection, which causes her mental distress and anguish. [REDACTED] contends that [REDACTED] has been placed in an intolerable dilemma in which she must choose between her marriage and her American way of life.

While the input of any medical health professional is respected and valued, [REDACTED]'s evaluation is based on a single interview with [REDACTED] and indicates that she does not have a history of mental health issues or treatment. A psychological report based on one interview does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering Dr. [REDACTED]'s findings speculative and diminishing his evaluation's value to a determination of extreme hardship. Moreover, the record does not contain evidence that [REDACTED] has sought or received any other treatment or evaluation for anxiety and depression at any other time. Accordingly, [REDACTED]'s evaluation will be given little evidentiary weight.

There is no evidence in the record that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by individuals whose families are separated as a result of removal. While the AAO acknowledges that [REDACTED] has experienced anxiety and depression as a result of separation from her spouse, the record does not distinguish her reactions from those commonly experienced by families upon removal. Additionally, the record reflects that [REDACTED] has family members, such as her parents, in the United States who may be able to assist her physically and emotionally in the absence of the applicant.

The record does not establish that [REDACTED] is unable to support herself and her parents without the applicant's income. Instead, the record reflects that [REDACTED] is employed as a faculty member at the University of Delaware with a salary of at least \$35,000. While [REDACTED] and her parents claim that Ms. [REDACTED]'s parents are unable to obtain suitable employment in the United States due to medical issues and a lack of education, there is no evidence in the record, besides the family's affidavits, to establish that either of [REDACTED]'s parents would be unable to obtain some type of employment to supplement [REDACTED] income. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support herself and her parents, even when combined with the emotional hardship described above.

Counsel, on appeal, asserts that, if the applicant is denied admission to the United States [REDACTED] will return to India. Counsel asserts that [REDACTED] is in the process of applying for her Ph.D. in science and mathematics and is a faculty member and teacher of computer science at Delaware State University. He asserts that [REDACTED] has dedicated most of her adult life and all of her meaningful academic life to the United States. Counsel asserts that [REDACTED] has invested so much time, money, emotion and effort in making a better life for herself, her loved ones, her colleagues and her students that it would be extremely harsh for her to return to India. He asserts that [REDACTED] should not have to give up all the time, money and effort she has put into her education and career in the United States. He asserts that [REDACTED] also has made an investment in real property when she purchased a townhouse for her and her family to live in. He asserts that [REDACTED]'s property investment will be wasted since she will be unable to obtain comparable employment in India and will have to dispose of the property. Counsel asserts that [REDACTED] lawful permanent resident parents live with and are financially dependent upon her. He asserts that [REDACTED] is an insulin-dependent diabetic who has high blood pressure who has never worked outside the household and has no vocational skills. Counsel asserts that [REDACTED] has poor vision, which forced him into an early retirement. He asserts that [REDACTED] is not in a position to find sufficient work to support himself and his wife and is completely dependent upon [REDACTED] for support. Counsel asserts that [REDACTED]'s parents will have to accompany her to India or [REDACTED] will have to attempt to support them financially in the United States while she resides and earns an income in India. He asserts that it will be an enormous strain on

financially and emotionally because her parents are dependent on her for their daily needs and overall financial security. He asserts that [REDACTED] will be under tremendous pressure, stress and unwarranted depression if she has to leave the United States and continue to support her parents, who are unable to realistically support themselves.

[REDACTED], in her affidavit, states that if the applicant is not permitted to enter the United States she will be forced to leave the United States and will lose the time, money and energy that she has put into her education and career. She states that her opportunities in the United States will also be lost and she will have to turn down her promising future, a future that would undoubtedly benefit the United States as she would use her skills in the education of others. She states that she would return to India, which is no longer her home, and where she would have less opportunity. She states that she will be forced to leave behind wonderful relationships both professional and personal with her students and colleagues. She states that her lawful permanent resident parents live with and are financially dependent upon her. She states that [REDACTED] is an insulin-dependent diabetic who has high blood pressure. She states that [REDACTED] has poor vision, which forced him into an early retirement. She asserts that her parents are completely dependent upon her for physical, emotional and financial support. She states that either her parents will be forced to accompany her to India or they will remain in the United States with no one to care for them. She states that this will be stressful on the family and it would be much harder for her to financially support her parents from India.

and [REDACTED] in their affidavits, state that [REDACTED] is the sole financial provider for the household. They state that [REDACTED] is an insulin-dependent diabetic who has high blood pressure who has never worked outside the household and has no vocational skills. They assert that [REDACTED] has poor vision, which forced him into an early retirement. They assert that it would be difficult for them to find suitable employment in the United States and they are completely dependent upon [REDACTED] for support. They assert that [REDACTED] will be devastated if she is unable to provide for them and she returns to India. They assert that [REDACTED] has worked hard in the United States and her dreams of doing great things in the United States will be shattered. They state that it will be difficult for her to repay her school loans, as well as continue to pay her mortgage if she returns to India. They state that, without [REDACTED]'s financial support, they will be unable to sustain a living in the United States and it would mean an end to their lives in the United States. They state that relocating at their age would be difficult. They state that the facilities in the United States are better than those available in India and they are, at their age, more prone to health problems and diseases. They state that, after living in the United States, adjusting to life in India will be difficult.

The applicant, in his affidavit, states that [REDACTED] will be forced to leave the United States and will lose the time, money and energy she has put into her education. He states that [REDACTED]'s opportunities in the United States will be lost. He states that she is now a foreigner to India and the opportunities for her there are fewer. He states that if [REDACTED] parents accompanied her back to India it will be a much more difficult proposition, financially, to continue to support them, even with his salary.

Having analyzed the hardships counsel and [REDACTED] claim she would suffer if she were to join the applicant in India, the AAO finds that they do not constitute extreme hardship. There is no evidence in the record that [REDACTED], her parents and the applicant would be unable to obtain *any* employment in India. While the employment they may be able to obtain in India may not be comparable to the employment they would have in the United States or allow for the standard of living to which they are accustomed, economic detriment of this sort is not unusual or extreme. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). The AAO acknowledges that, if the applicant is denied

admission to the United States and [REDACTED] joins him in India she may be unable to pursue her doctoral program. This, however, is not a hardship that is beyond those commonly suffered by aliens and families upon removal. While the hardships that would be faced by [REDACTED] in relocating to India, including her and her parents' readjustment to the culture, economy, environment, separation from friends and colleagues, and an inability to obtain the same opportunities they would receive in the United States, are unfortunate, they are the types of hardships routinely encountered by any spouse joining a removed alien in a foreign country. Moreover, the AAO notes, as previously indicated, that the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

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 would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions and difficulties that arise whenever a spouse is removed from the United States. 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 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 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 sections 212(a)(9)(B)(v) and 212(i) of the Act, 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i). 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. Counsel's remaining contentions go to the matter of discretion and will not be addressed in this decision.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 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 application is denied.