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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEW DELHI, INDIA Date: OCT 03 2008

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India. He was found to be inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II) and 1182(a)(2)(A)(i)(I), for having been unlawfully present in the United States for one year or more and having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States without inspection on or about May 2, 1993 and later applied for asylum. His asylum application was denied, and an order of voluntary departure converted to a removal order thirty days after a petition for review was dismissed by the U.S. Court of Appeals for the Ninth Circuit on April 19, 1999. The applicant remained in the United States until June 28, 2001, when he was removed to India. The applicant applied for an immigrant visa 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 remain in the United States and reside with his spouse.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer in Charge* dated May 5, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) committed error when it relied on the applicant's conviction for solicitation of a prostitute because this crime is not a crime involving moral turpitude. Counsel states that this finding skewed any balancing of equities and adverse factors necessary in determining whether the waiver application should be granted. *See Notice of Appeal to the AAO (Form I-290B)* dated June 6, 2006. In support of the waiver application counsel submitted an affidavit from the applicant's wife and a report from a psychologist who evaluated the applicant's wife and stepdaughter. The entire record was reviewed and considered in arriving at 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 –
- (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 Secretary, 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.

Counsel contends that CIS erred in determining that the applicant is inadmissible under section 212(a)(2)(a)(i)(I) of the Act because soliciting a prostitute is not a crime involving moral turpitude. The Board of Immigration Appeals (BIA) has held that solicitation of a prostitute is a crime involving moral turpitude. See *Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965); *Matter of S-L-*, 3 I&N Dec. 396 (BIA 1948). In a recent decision, the BIA held that soliciting a prostitute did not render an individual inadmissible under section 212(a)(2)(D) of the Act, but did not make a determination of whether the crime involved moral turpitude. The AAO further notes that in the present case, the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence in the United States for a period of one year or more, and for this additional reason, he is required to apply for a waiver of inadmissibility.

The AAO notes that the record contains references to the hardship that the applicant's U.S. Citizen stepdaughter is suffering as a result of separation from the applicant. Section 212(a)(9)(B)(v) of the Act provides that a waiver of 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. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. The applicant is also seeking a waiver of inadmissibility under section 212(h) of the Act, which can be granted if extreme hardship to a U.S. Citizen or Lawful Permanent Resident child is established. The applicant's spouse is, however, the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's stepdaughter will therefore not be separately considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. 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 record reflects that the applicant is a forty-six year-old native and citizen of India who first entered the United States without inspection in 1993. The applicant accrued unlawful presence from April 19, 1999 until June 28, 2001, when he was removed from the United States. The applicant is therefore inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. Pursuant to section 212(a)(9)(B)(i)(II) of the Act, the applicant is barred from again seeking admission within ten years of the date of his departure. The record further reflects that the applicant's wife is a forty-three year-old native of India and citizen of the United States.

Counsel states that the applicant's wife and stepdaughter are exhibiting signs of depression and anxiety and experiencing "severe situational depression and emotional trauma" as a result of being separated from the applicant. *See Counsel's letter in support of I-601 Application* dated December 2, 2004. In support of this assertion counsel submitted a psychological evaluation conducted by [REDACTED], a licensed clinical social worker. The evaluation states,

It is apparent that [REDACTED] is facing the possibility that her husband may not be able to return to the United States and this is causing her several symptoms of anxiety and depression. In addition to this her daughter, is also experiencing severe distress.... She has serious difficulty with sleeping and has a very poor appetite. She has frequent thoughts of suicide and states that all that keeps her alive right now is her daughter. *Evaluation prepared by [REDACTED] Ph.D., LCSW*, dated November 20, 2004.

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of the applicant's wife, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife or any history of treatment for her depression or anxiety. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight that would result from an established relationship with the psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, there is no evidence submitted with the waiver application or appeal that [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of major depression and a possible suicide risk.

The evidence on the record is insufficient to establish that separation from the applicant is causing his wife to experience emotional harm that is more serious than the type of hardship a family member would normally suffer when faced with her spouse's deportation or exclusion. Although the effects of being separated from her spouse are neither questioned nor minimized, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists. Any emotional hardship the applicant's wife is suffering appears to be the type of hardship normally to be expected when a family member is excluded or deported.

The applicants' wife states that in addition to emotional hardship, she is suffering financial hardship as a result of the applicant's removal from the United States. She states,

If my husband were forced to stay in India, I would be devastated. He is my support. It would destroy our family. Without him, I would face extreme financial and emotional hardship since I love him very much. Our family would be literally ripped apart at the seams. See Affidavit of [REDACTED] dated November 4, 2004.

No evidence was submitted to document the applicant's wife's income and expenses or the amount of money she has sent to the applicant in India, or the applicant's income when he resided with the applicant in the United States from 1995 to 2000. 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)). Further, the applicant's wife states in her affidavit that she is employed in a nursing home, and there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. See *INS v. Jong Ha Wang*, *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The emotional and financial difficulties that the applicant's wife is experiencing appear to be the type of hardships that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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). The applicant made no claim that his wife would experience hardship if she were to relocate with him to India. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to India.

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(a)(9)(B)(v) of the Act.

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.