

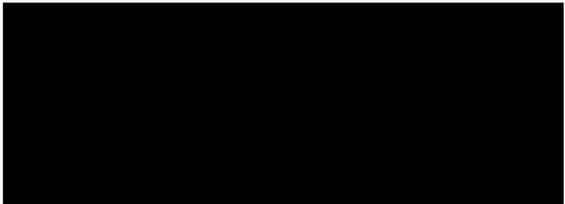


U.S. Citizenship  
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FILE: [REDACTED]

Office: NEW DELHI, INDIA

Date: **SEP 10 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.

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 (OIC), New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 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 and seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant's father is a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with his United States father, lawful permanent resident mother, and United States citizen brother.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *OIC's Decision*, dated May 3, 2006.

On appeal, the applicant, through counsel, asserts that the OIC "erred as a matter of law and abused his discretion in denying the Form I-601...The [OIC] committed error in concluding that applicant failed to show that his U.S. citizen father would suffer extreme hardship." *Form I-290B*, filed June 1, 2006.<sup>1</sup>

The record includes, but is not limited to, counsel's brief, declarations from the applicant's father, medical documents pertaining to the applicant's father's medical conditions, and a psychological evaluation on the applicant's father. 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:

(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

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<sup>1</sup> The AAO notes that the applicant's mother was admitted to the United States as a lawful permanent resident after the applicant's appeal was filed. While this information was supplied to the AAO by counsel, no additional claim of hardship to the applicant's mother was made. Therefore, only the claims of hardship to the applicant's father will be addressed.

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.

In the present application, the record indicates that in May 1997, the applicant entered the United States without inspection. On December 23, 2002, the applicant's father filed a Form I-130 on behalf of the applicant. On July 29, 2004, the applicant's Form I-130 was approved. In July 2005, the applicant departed the United States. On August 5, 2005, the applicant filed a Form I-601. On May 3, 2006, the OIC denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and he failed to demonstrate extreme hardship to his United States citizen father.

The applicant accrued unlawful presence from May 3, 2002, the date the applicant turned eighteen (18) years old, until July 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his July 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

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.

The applicant, through counsel, claims that the applicant's father would face extreme hardship if he joined the applicant in India. Counsel states that the "most significant hardship factor [is] the separation from family living in the United States." *Appeal Brief*, page 14, filed June 1, 2006. The applicant's father states if he "moves to India, [he] will be giving up a successful business that [he has] worked very hard at, a nice home, and worst of all will be the difficulties from taking [their] youngest son...out of school and away from his friends...If [the applicant] [was] here he can also help with and learn [his] business." *Declaration of* [REDACTED] dated July 12, 2005. The applicant's father states he has "part ownership in a minimart/gas station." *Declaration of* [REDACTED] dated September 8, 2006. The AAO notes that it has not been established that the applicant's father has no transferable skills that would aid him in obtaining a job in India. Additionally, the applicant's father is a native of India, who spent his formative years in India, he speaks the language, and there is no evidence that the applicant and his father have no family ties in India. The applicant's father states that his "physical and mental well-being

has deteriorated.” *Id.* On December 4, 2005 and July 21, 2006, [REDACTED] diagnosed the applicant’s father with major depressive disorder and post traumatic stress disorder. *See psychological evaluations by [REDACTED] [REDACTED] dated December 4, 2005 and July 21, 2006.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological evaluations are based on two interviews between the applicant’s father and the clinical social worker. There was no evidence submitted establishing an ongoing relationship between [REDACTED] and the applicant’s father. Moreover, the conclusions reached in the submitted evaluations, being based on two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a clinical social worker, thereby rendering the clinical social worker’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship. The applicant’s father states he is “suffering from hypertension, depression and insomnia...[and he has] multiple factors for coronary [sic] artery disease and stroke.” *Declaration of [REDACTED] dated September 8, 2006.* Dr. [REDACTED] diagnosed the applicant with hypertension, chest pain, depression, insomnia, hyperlipidemia, and myalgia. *See letter from [REDACTED], dated July 7, 2006.* The AAO notes that there is no indication that the applicant’s father cannot receive treatment for his medical conditions in India or that he has to remain in the United States to receive his medical treatments. The AAO finds that the applicant failed to establish that his father would suffer extreme hardship if he joined the applicant in India.

In addition, counsel does not establish extreme hardship to the applicant’s father if he remains in the United States, maintaining his business and with access to medical care. As a United States citizen the applicant’s father is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. Counsel states that the applicant “will have a difficult time finding employment in India. He did not finish college and he has no significant professional job experience.” *Id.* at 16. The AAO notes that it has not been established that the applicant cannot continue his studies in India. Additionally, hardship the applicant himself experiences upon removal is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Counsel states that the applicant’s father has to endure “the hardship of supporting two households, one in the U.S., and one in India.” *Id.* The AAO notes that the applicant is an adult and it has not been established that he cannot obtain a job in India to help support himself. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant’s father faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, “election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed.” *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States court decisions have repeatedly 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, *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. In *Hassan, supra*, the Ninth Circuit Court of Appeals held further 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely 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.