U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: JUN 1 1 2009

IN RE: [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 PETITIONER:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 who resided in the United States from June 1994, when he entered without inspection, to June 2004, when he returned to India. He was 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 one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. 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 return to the United States and reside with his wife and children.

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 July 26, 2006.

On appeal, counsel for the applicant asserts that the applicant's wife is experiencing extreme hardship due to separation from the applicant and the effects of the separation on their children. Specifically, counsel states that the applicant's wife and children resided with him in India from 2004 to January 2006, when they returned to the United States because of their daughter's medical condition brought on by conditions in India. *See Counsel's Letter in Support of I-601 Application* dated May 19, 2006. Counsel further claims that the applicant's wife is suffering financial hardship because she is financially dependent on him and he is unable to support her while he resides in India. *Counsel's Letter dated May 19, 2006.* Counsel additionally asserts that the applicant's father, a Lawful Permanent Resident, suffers from medical conditions that render him completely disabled and relies on the applicant for support. *Counsel's Letter dated May 19, 2006.* In support of the appeal counsel submitted letters from the applicant's wife and brother, a psychological evaluation of the applicant's wife and children, medical records for the applicant's wife and other family members, a copy of a deed for the home owned by the applicant and his brother, and a copy of the license for the applicant's business in the United States. 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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse and father are the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse or father.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (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. 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 *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court 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.

In the present case, the record reflects that the applicant is a forty-nine year-old native and citizen of India who has resided in the United States since June 1994, when he entered without inspection, to June 2004. The applicant was ordered deported in absentia on July 13, 1994 and later attempted to apply for asylum and have his deportation proceedings reopened by the immigration judge. His

asylum application was rejected by the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services, USCIS) for lack of jurisdiction because the applicant had been ordered deported by the immigration judge. The applicant submitted a motion to reopen to the immigration judge, and appealed the denial of this motion to the Board of Immigration Appeals and the U.S. Court of Appeals for the 5th Circuit. These appeals were dismissed and the applicant returned to India in June 2004 to apply for an immigrant visa. The applicant never properly filed an application for asylum and was unlawfully present in the United States from April 1, 1997, the date section 212(a)(9)(B)(i) of the Act entered into effect, until his departure in June 2004. The applicant married his wife, a native of India and citizen of the United States, on April 3, 2000. He currently resides in Jalandhar, Punjab, India, and his wife resides in Victorville, California with their two children.

Counsel for the applicant states that the applicant's wife is suffering extreme hardship due to separation from the applicant and the effects of the separation on their children, in particular their daughter. In support of this assertion, counsel submitted a letter from the applicant's wife and a physical and psychological evaluation for the applicant's wife and daughter. The applicant's wife states that her daughter must be educated in the United States and that she became chronically sick in India due to bacteria in the water and food and is presently receiving treatment in the United States. *See letter from* [redacted] dated May 19, 2006. She further states that to maintain her relationship with the applicant, she must travel back and forth between the United States and India. *Id.* A report concerning a physical examination conducted on the applicant's wife and daughter further indicates that his wife had experienced some abdominal cramping, but showed no evidence of any "organic internal disease" and was referred to a forensic psychiatrist for assessment because of chronic sadness and symptoms of emotional distress. *See Formal Comprehensive Examination in Internal Medicine* dated September 12, 2006. A psychological evaluation of the applicant's wife and children further states that his wife is experiencing anxiety and depression due to uncertainty about whether the applicant will be permitted to return to the United States. *See Psychiatric Evaluation from* [redacted] dated August 2006. [redacted] further states that learning that the applicant's waiver had been denied and he would have to remain outside the United States for ten years left his wife devastated, and she reports feeling numb and experiencing loss of appetite, difficulty sleeping, and feelings of hopelessness. *Psychiatric Evaluation from* [redacted] *M.D.* [redacted] concludes that the applicant's wife is suffering from Major Depressive Disorder and Adjustment Disorder with Anxiety. *Id.*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's wife's physical or psychological condition is so serious that she would suffer extreme hardship if she remained in the United States without the applicant. The record contains a report from a physician who conducted a physical evaluation on September 5, 2006 and a psychiatric evaluation conducted in August 2004. The physical evaluation indicates that aside from some abdominal cramping that could be an early sign of irritable bowel syndrome, the applicant's wife did not suffer from any specific medical condition. The psychiatric evaluation indicates that the applicant's wife was experiencing depression and anxiety due to separation from the applicant and uncertainty over his immigration status.

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 report is based on a psychiatric 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 psychiatrist, thereby rendering the psychiatrist'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 or any other mental health professional provided any follow-up treatment, despite the diagnosis of depression and anxiety.

Counsel also asserts that the applicant's wife would suffer hardship as a result of her daughter's medical condition. Although the emotional effects of a serious medical condition of a qualifying relative's child or other close relative could be considered in assessing a claim of extreme hardship, the evidence in the present case does not establish that the applicant's daughter is suffering from such a condition. In support of the assertions concerning the medical condition of the applicant's daughter, counsel submitted a physical evaluation from indicating that a laboratory workup was performed on the applicant's daughter and she was also referred for a psychiatric evaluation. s report provides an overview of medical problem the applicant's daughter experienced in India, as reported by her mother. does not provide any details about her condition, except those provided by her mother, and provides a diagnosis of "Chronic infectious diarrhea by history," and "psychological factors affecting bowel habit."

The AAO notes that although indicates that the applicant's daughter was treated for her condition both in India and by a local physician in April 2006, and that he reviewed these records, no copy of these records was submitted with the waiver application or appeal. The only record submitted was a one-page "urgent care" record indicating that the applicant's daughter was treated there for diarrhea. The report contains handwritten notes, most of which are illegible, and the record does not contain any information about any follow-up treatment or specific evidence concerning the current medical condition of the applicant's daughter, such as a detailed letter in plain language from her physician explaining the nature and long-term prognosis of her condition and any treatment and medication needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. A psychological evaluation conducted on the applicant's daughter states that she is suffering from depression and Post-Traumatic Stress Disorder "related to the traumatic separation from her father and unresolved grief reaction." The evaluation was prepared after the applicant's daughter was interviewed by on August 24, 2006, and like her mother's evaluation, is based on one interview, which limits its value in the assessment of extreme hardship to the applicant's wife.

Although counsel asserts that the applicant's wife is suffering from emotional hardship due to separation from the applicant and the effects of her daughter's physical and psychological condition, the evidence on the record does not establish that any emotional difficulties the applicant's wife would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her

distress caused by the prospect of being separated from her husband is not in question, a waiver of inadmissibility is only available 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.

Counsel asserts that since the applicant departed the United States, his wife has suffered financial hardship. The applicant's wife states in her letter, "I do not work, and am totally financially dependent on my husband, and his family for my financial support, and his children's financial support." The record contains a copy of a deed for a home owned by the applicant and his brother and a copy of a business license, but no evidence of the income earned by the applicant when he resided in the United States and no other documentation related to the expenses and financial situation of the applicant's wife and children. 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, there is no indication that there are any ongoing unusual circumstances that would prevent the applicant's wife from working or otherwise cause financial hardship beyond what would normally be expected as a result of separation from the applicant. Any financial impact of the loss of the applicant's income 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).

In her letter the applicant's wife states that her daughter was chronically ill in India, but makes no further claims concerning hardship she would experience in India. The psychological evaluation by [redacted] indicates that the applicant's wife states that they were impoverished while residing in a home owned by the applicant's father and that the applicant generated very little income from farming. *Psychiatric Evaluation from* [redacted] She further reported feeling isolated there because she had no extended family, and states that the children were often sick and her daughter was very unhappy. *Id.* Aside from these statements, no further evidence was submitted concerning past hardship and potential future hardship to the applicant's wife in India, and no documentation was submitted concerning her daughter's treatment for gastrointestinal problems in India or the United States. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.* Although relocating to India would likely have a negative effect on the financial situation and standard of living of the applicant's wife, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang, supra.*

Counsel additionally asserts that the applicant's father would suffer extreme hardship if the applicant is denied admission to the United States, and further states that both the applicant's brother and father are disabled and totally dependent on the applicant. *Counsel's Letter dated May 19, 2006.* Counsel states that due to chronic back pain, the applicant's brother is unable to work at the business

they own, and the profits are therefore going to a third party who is running the business for them. *Id.* In support of these assertions counsel submitted medical records for the applicant's father and a letter from a physician in India stating that he operated on the applicant's brother in February 2005 for Lumbar Disc Prolapse. The documentation concerning the applicant's brother does not establish that he is disabled or unable to work and support the applicant's father. Further, records for the applicant's father indicate that he has diabetes, but are otherwise illegible and do not contain any specific information about his current medical condition. There is no documentation, such as a detailed letter in plain language from his physician explaining the nature and long-term prognosis of his condition. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed.

The emotional, physical, or financial hardship the applicant's wife or father would experience if he is denied admission to the United States appears to be the type of hardship that a family member 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).

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 or Lawful Permanent Resident father 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.