

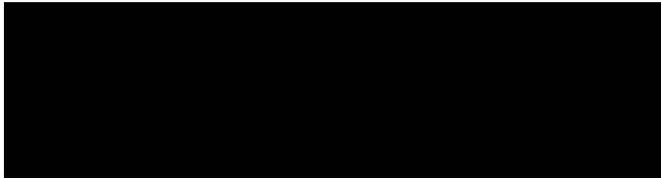
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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Office: NEW DELHI, INDIA

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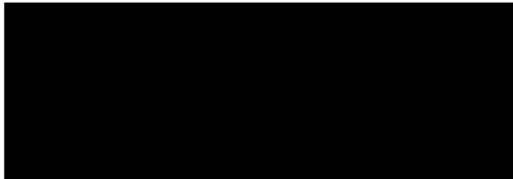
JUN 25 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act (INA), 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.

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 Field Office Director, New Delhi, India, denied the instant waiver application. The matter 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, the spouse of a U.S. citizen, and the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The applicant's immigration status has been the subject of various petitions and applications. This decision is concerned with the Form I -130 petition filed for the applicant on March 15, 2002 and approved on January 12, 2005, and with the subsequently filed Form I-601.

The field office director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The field office director also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse, and denied the application.

On appeal, counsel submitted additional evidence. Counsel also stated, "Five years expires on Sept. 18, 2007, & thus would eliminate any ineligibility on this issue."

Although counsel did not appear to contest the field office director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(9)(B)(i) of the Act provides:

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

The record shows that the applicant entered the United States legally on January 22, 1998. His period of authorized stay was due to expire on July 21, 1998. On April 14, 1998, however, the applicant submitted an asylum application. On October 8, 1998 the Director, San Francisco Asylum

Office, found that the applicant's asylum claim lacked credibility, and referred the matter to an Immigration Judge. On April 28, 2000, when the applicant failed to appear for a hearing pertinent to his asylum claim, the immigration judge found that he had abandoned his asylum claim and ordered that the applicant be removed from the United States to India. On that latter date, the applicant's presence in the United States became unlawful.

On April 11, 2001 the applicant married a U.S. citizen, and, on June 15, 2001 the applicant's spouse filed a Form I-130 petition on the applicant's behalf.<sup>1</sup> The applicant concurrently filed a Form I-485, and, on that date, the applicant's presence in the United States became lawful again for the purposes of section 212(a)(9)(B)(i) of the Act. Memo. from Donald Neufeld, Acting Assoc. Dir., Domestic Ops. Directorate, US Citizenship and Immigration Services, US Dept. Homeland Sec., to Field Leadership, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* (May 6, 2009) at (b)(3)(A).

However, the applicant had already been unlawfully present in the United States from April 28, 2000 to June 15, 2001, a period greater than one year.

On February 6, 2002, the applicant's U.S. citizen spouse withdrew her petition, alleging that the applicant had progressive alcoholism and had assaulted her and threatened to kill her. On that date, the applicant was arrested and placed in detention. On February 7, 2002, the USCIS denied the Form I-130 petition.<sup>2</sup> On September 18, 2002, the applicant was deported to India.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from April 28, 2000 to June 15, 2001, and that he has since left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

On appeal, counsel noted that the five-year anniversary of the applicant's deportation would be September 18, 2007, and stated that the applicant's ineligibility would thus be eliminated. The AAO observes, however, that inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act continues for ten years after departure, rather than five, as counsel suggests.

The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] 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

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<sup>1</sup> This is not the Form I-130 petition with which this decision is concerned. The applicant's wife subsequently filed another Form I-130 petition.

<sup>2</sup> Again, this is not the Form I-130 petition upon which the Form I-601 waiver application in this case was based, but a previous Form I-130 petition.

established to the satisfaction of the Attorney General 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of 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).

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 contains a letter, dated April 6, 2002, from the applicant's wife. In it, she stated that she was withdrawing her support for the previous petition she filed for the applicant. She stated,

The reason I am withdrawing is due to an escalating problem with alcohol addiction. This behavior has been increasing for 2 – 3 months resulting in a domestic violence episode against me on Jan. 31<sup>st</sup> I was struck several times and threatened with how he would kill me and dispose of my body – then kill others including a four year old child I take care of. This went on several hours until he passed out. He was arrested and then released – started drinking – broke the no contact order & threatened to kill

me again on my phone recording – was again arrested. I left my home & stayed with friends until I could leave Tacoma to be with family. I have learned of similar behavior in India recently I didn't know about before I married him in April 2001. I will be starting a marriage desolution as soon as I return to Tacoma on February 9<sup>th</sup>.

[Errors in the original.]

The record contains various documents that confirm that the applicant was arrested for having committed a domestic violence assault, harassment, and interfering with reporting domestic violence by preventing a domestic violence victim from calling 911 on or about January 28, 2002. The record shows that the applicant pleaded guilty to those offenses on January 30, 2002. Other documents in the record show that, on February 1, 2002, the applicant was charged with violating a non-contact order. The disposition of that charge is unknown to this office.

The applicant's convictions may be for crimes involving moral turpitude that render him inadmissible based on section 212(a)(2)(A) of the Act. Because the applicant has not been found inadmissible on this ground previously, or been accorded an opportunity to address it, the AAO will not rely, in today's decision, on that ground of inadmissibility.

The record contains another letter, dated February 4, 2003, from the applicant's wife. In that letter she stated that she loves the applicant and wants their marriage to continue. She stated that she withdrew the previous application because of a fight they had when the applicant was drinking, and that it was the first time she ever saw him drunk.

This office notes that the applicant's wife's assertion, in her April 6, 2002 letter, that her husband had an "escalating problem with alcohol addiction" that was "increasing for 2 – 3 months" before culminating in an episode of domestic violence appears to conflict with her amended version of events, dated February 4, 2003, in which she stated that the episode in which the applicant assaulted her and threatened her with death was the first time she had ever seen him drunk.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In a notarized statement, dated December 27, 2004, the applicant's wife stated that she and the applicant "have a loving and intact marriage and must continue to have a family life together." With that statement, the applicant's wife provided photographs showing that she had visited the applicant and his family in India recently.

In a letter dated August 17, 2006 the applicant's wife stated that they have "a strong and bonded marriage."

In her April 6, 2007 letter, the applicant's wife stated that she required knee replacement, but would require 24-hour care during her convalescence, and is unable, therefore, to proceed with the surgery without her husband present to assist her in the United States. She stated that she is unable to work, walk, or drive a car. She indicated that delaying the surgery is affecting her hips and back. She further stated, "My hardship is having to grow old without my husband[,] and my family not being together with me in the United States."

In support of the applicant's wife's medical claims, counsel provided a Visit Summary, dated October 19, 2006, from [REDACTED] a medical doctor in Tacoma, Washington. That summary states that the applicant's wife has persistent pain in her right knee. [REDACTED] recommended surgery, and stated that the applicant's wife, with proper management, could probably delay that surgery for a year and a half, and perhaps longer. That summary also stated that the applicant's wife lives with her son.

The record contains various letters from the applicant to his wife, and a letter from the applicant's son to the applicant's wife. Those letters were apparently provided to demonstrate the mutual affection between the applicant and his wife, and between the applicant's wife and the applicant's children. The salutation on one letter, dated May 12, 2003, reads, "My most respected, honourable, lovable, sweet-heart, my love, my honey, my darling . . . ."

The applicant has not alleged that failure to grant the waiver application would occasion any financial hardship to his wife. In any event, the AAO notes that the applicant's wife claimed, in her April 6, 2007 letter, to have a retirement pension of \$1,600 per month. The applicant's wife appears to be satisfactorily self-supporting.

The applicant's wife's assertion that she is unable to proceed with surgery without her husband's presence is insufficiently explained. The AAO notes, in that regard, that the applicant's wife's doctor, [REDACTED], reported, in his October 9, 2006 Visit Summary, that the applicant's wife's son lives with her. There is no explanation of the applicant's wife's implicit assertion that no one else, her son, another relative, a friend, or a professional nurse, is able to assist the applicant's wife in her convalescence.

The remaining hardship consideration, if the applicant's wife remains in the United States, may be called emotional hardship. The applicant's wife stated that she loves her husband and wants their marriage to continue. She stated that she and the applicant "have a loving and intact marriage and must continue to have a family life together." She stated that they have "a strong and bonded marriage." She stated that one facet of her hardship is having to grow older without her husband and family.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 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 faces extreme hardship if the applicant’s waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant’s immigration status is neither doubted nor 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 affection and a certain amount of emotional and social interdependence. While, in common parlance, 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 made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Thus, the applicant has failed to demonstrate that failure to approve the waiver application will cause his wife to suffer extreme hardship if she lives in the United States without him. Further, the applicant has submitted no evidence sufficient to show that his wife will suffer extreme hardship if the waiver application is denied and she moves to India to be with him.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 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.