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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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HL

FILE:



Office: NEW DELHI, INDIA

Date:

IN RE:



JAN 09 2006

APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, New Delhi, India. The matter 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 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 applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated September 19, 2005.

On appeal, the applicant's spouse asserts that the Indian government will allow him to leave India and that she is suffering from depression. *See Letter from Applicant's Spouse*, undated.

The record includes, but is not limited to, statements from the applicant and his spouse, court records for the applicant, a doctor's note for the applicant's spouse and a letter regarding the applicant's spouse's social security benefits. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States without inspection in December 1999. The applicant remained in the United States until October 21, 2004. Therefore, the applicant accrued unlawful presence from when he entered the United States in December 1999 until October 21, 2004, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his October 21, 2004 departure from the United States. Therefore, the applicant is 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.

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.

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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in the India or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The AAO notes that there is an issue as to the validity of the applicant's Indian passport. The decision states that the applicant has disclosed that he holds a passport with a false date of birth. *Decision of the Officer-in-Charge*, at 3. The applicant states that a court order permits him to use this passport for future travel. *Applicant's Statement*, dated May 11, 2005. The applicant's spouse has submitted court records, however, there are no statements verifying the applicant's assertion of passport validity.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the India. The applicant's spouse states that her family in the United States includes her two sisters, brother, mother, nephew and niece. *I-601 Support Letter from Applicant's Spouse*, at 2, dated March 31, 2005. The applicant's spouse states that she has lived in India before, but she is uncomfortable due to people staring at her and she cannot speak the native language well. *Id.* There are no other assertions made in regards to this prong of the analysis. Furthermore, the AAO notes that relocation to a foreign country generally involves some inherent difficulties such as adapting to cultural norms, however, the record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she has depression and this is the reason she is on disability. *See Letter from Applicant's Spouse*, at 2. She states that she thinks more of dying, cries herself to sleep and just stays in her room. *Id.* The applicant's spouse states that she has been hospitalized several times for overdosing on antidepressants and for attempting suicide. *I-601 Support Letter from Applicant's Spouse*, at 1. However, the record does not include any evidence to verify the claims of hospitalization. The record does include a doctor's note stating that the applicant's spouse is suffering from depression and her mental state would improve if the applicant was in the United States with her. *Note from Dr. Martin Wall*, dated December 2, 2005. The AAO notes that this letter lacks significant probative value as

it does not indicate the history of the doctor-patient relationship, the severity of the applicant's problems and whether she is receiving any treatment and the effects of the treatment.

In regard to the financial impact of separation, the applicant's spouse states that she can't keep a job as she may get paranoid in front of people and that her disability payments are used to cover her daily expenses. *Id.* at 1-2. She states that if the waiver is not granted, they will run out of money and the applicant will have to work as a farmer in difficult conditions. *Id.* at 2. The AAO notes that there is no evidence of their financial state other than the letter verifying the applicant's spouse's social security benefits. Therefore, a thorough review of the entire record does not reflect that separation will result in extreme hardship to the applicant's spouse.

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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.