



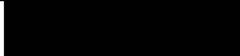
U.S. Citizenship
and Immigration
Services

PUBLIC COPY
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

H4



FILE:



Office: NEW DELHI, INDIA

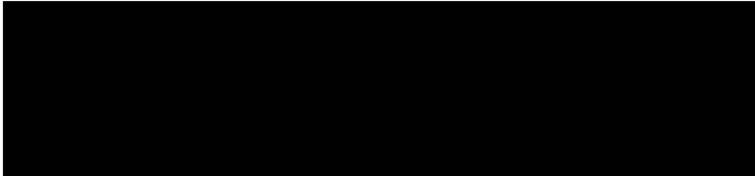
Date: **APR 23 2008**

IN RE:



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:



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. 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 ten years of his last departure from the United States. The applicant is married to a U.S. citizen spouse. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated March 8, 2006.

On appeal, the applicant asserts that he has demonstrated that his qualifying relative would suffer extreme hardship if he were removed from the United States. *Form I-290B; Attorney's brief*. The AAO notes that the Officer in Charge also denied the applicant's Form I-212, Permission to Reapply for Admission into the United States After Deportation or Removal. *Decision of the Officer in Charge*, dated March 8, 2006. Although the applicant indicates he wishes to appeal the denial of both his Form I-601 and Form I-212, he submits only one Form I-290B and fee. Therefore, the AAO will consider the Form I-601 on appeal.¹

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, tax statements and records for the applicant and his spouse; a lease agreement; copies of photographs; a statement from the applicant's spouse; rent receipts; and statements from family members and friends. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

¹ When an inadmissible alien files both the Form I-601 and the Form I-212, the *Adjudicator's Field Manual* provides the following guidance:

Chapter 43 Consent to Reapply After Deportation or Removal

43.2 Adjudication Processes:

(d) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

(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.

In the present application, the record indicates that the applicant entered the United States without inspection in January 1990 at El Paso, Texas. *Consular Memorandum*, dated August 31, 2005. On July 11, 1994 the applicant was issued an Order to Show Cause for having entered without inspection. *Form I-221, Order to Show Cause*. On August 2, 1995 an immigration judge ordered the applicant deported. *Order of the Immigration Judge, Executive Office for Immigration Review*, dated August 2, 1995. The applicant did not depart the United States. On April 9, 2001 the applicant married a U.S. citizen. *Marriage certificate; Birth certificate of the applicant's spouse*. On April 28, 2001, the applicant's spouse filed a Form I-130, Petition for Alien Relative and the applicant concurrently filed a Form I-485, Application to Register Permanent Resident or Adjust Status. *Form I-130; Form I-485*. In February 2003, the applicant appeared for his adjustment of status interview and was arrested by immigration authorities. *Consular Memorandum*, dated August 31, 2005. The applicant was physically removed from the United States in March 2003. *Warrant for Deportation*, dated March 10, 2003. On June 2, 2003, the applicant's spouse filed a second Form I-130 on the applicant's behalf, which was approved on October 26, 2004. *Form I-130*.

The applicant filed his Form I-485, Application to Register Permanent Residence or Adjust Status on April 28, 2001. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002*. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 28, 2001, the date he filed the Form I-485. In applying for an immigrant visa outside the United States, the applicant is seeking admission within ten years of his March 2003 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 a violation of 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. The plain language of the statute indicates that hardship that the applicant experiences upon removal is not directly relevant to the determination of whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in India or 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.

If the applicant's spouse joins the applicant in India, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Puerto Rico. *Birth certificate*. Both of her parents were born in Puerto Rico and live in New York. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The record does not address what type of hardship the applicant's spouse may encounter if she were to reside in India. As such, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in India.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the parents of the applicant's spouse live in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. According to counsel, a denial of the waiver request will create significant and severe financial and emotional hardships for the applicant's spouse. *Attorney's brief*. Counsel states that the applicant's spouse is enrolled as a college student and is only working part time, earning approximately \$240 a week. *Id.* He notes that in the applicant's absence, his spouse has been required to work extra hours and to seek financial assistance from her parents. *Id.* Counsel also contends that a lengthy separation of the applicant and his wife will be a virtual death sentence for their marriage. *Id.* He asserts that cumulatively these hardships merit the approval of the applicant's waiver request.

In her statement, the applicant's spouse states that she earns \$240 per week and is unable to manage everything and now has to work extra hours. *Statement from the applicant's spouse*, dated March 20, 2005. The record includes utility bills, telephone bills, and a lease agreement. See *utility bills, telephone bills, and*

lease agreement. The applicant's spouse notes that when her husband was in the United States, they were able to manage everything. *Id.* While the AAO acknowledges the assertions of the applicant's spouse, it notes that there is nothing in the record to demonstrate that the applicant is unable to work in India and contribute to the financial well-being of his family.

The applicant's spouse states that she and the applicant miss each other, and that the applicant is a good provider and very helpful man. *Id.* While the AAO acknowledges these emotions, 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 her continued separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse rises to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to remain in the United States.

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