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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090

U.S. Citizenship  
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Services

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**H4**

FILE:



Office: NEW DELHI

Date: **MAR 19 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).

*Michael Shumway*

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer in Charge (OIC), 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 who presently resides in New Delhi. The applicant is the beneficiary of an approved Form I-129 petition filed by her U.S. citizen spouse. 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 her husband.

The OIC found that the applicant had been in the United States pursuant to an H-4 visa with her previous husband, that she had her previous husband separated, and that in September 2000 she was informed that her Form I-485 Application to Adjust Status had been denied based on her having divorced on March 31, 1999. The OIC found that the applicant departed the United States on July 29, 2002.

Yet further, the OIC found, therefore, that the applicant's unlawful presence in the United States began during September 2000, ended on July 29, 2002, and encompassed more than one year; and that the applicant is inadmissible, pursuant to section 212(a)(9)(B)(i) of the Act, based on unlawful presence in the United States for a period greater than one year.

On appeal, counsel submitted an affidavit, dated September 21, 2006, from the applicant's husband, that states that the applicant was unaware that her presence in the United States was unlawful. He did not state that the applicant had failed to receive her denial notice, but, rather, that she did not understand that denial of her application rendered her presence in the United States unlawful. The applicant's husband did not state his basis for this purported knowledge.

Counsel asserted, on appeal, that during August 1999, after her Form I-485 Application to Adjust Status was denied, the applicant received a notice from the Immigration and Naturalization Service, indicating that she had been granted status as a lawful permanent resident. (LPR) Initially, the AAO notes that the Form I-485 application was denied after August 1999, rather than before, as counsel implied.

Counsel further stated that the applicant did not depart the United States because the dissonant notices caused her to be unsure whether she had legal status in the United States. Counsel submitted no evidence that the applicant received such a notice during August of 1999 and did not state his basis for that assertion.

Counsel's assertion suggests that either the applicant's adjustment of status was correctly approved on that date, or, in the alternative, that the approval notice the applicant then received deceived the applicant into believing that she had been granted LPR status, and that, based on that incorrect information and belief, her remaining in the United States unlawfully was not willful, and she should not now be found inadmissible based on that unlawful presence.

The correspondence to which counsel apparently refers is a form notice in the record, dated August 26, 1999, addressed to the applicant at her then address of record in Waukegan, Illinois. The form notice states that the applicant's LPR status has been granted. It also states that the letter is not, in itself, to be used as evidence of that status. The letter is not signed or stamped, and the record contains no evidence that it was ever mailed. The AAO notes that such letters were often prepared, to be signed and mailed upon approval, and subsequently left in USCIS records after the corresponding application or petition was denied. Its presence in the record does not indicate that the applicant was ever granted LPR status.

The AAO notes that the applicant has never claimed to have received that notice during August of 1999, nor has her husband ever claimed that she then received it. Only counsel has so claimed, and this claim has been made only on appeal. It has never been made previously in this case.

Further, based on a chronological review of the relevant evidence, the AAO does not believe that the applicant received that notice during August 1999, and that it caused her confusion as to her status. A discussion of that chronological review follows.

The record contains a Judgment for Dissolution of Marriage, divorcing the applicant from her previous husband. That judgment was filed with the clerk of the 19<sup>th</sup> Judicial Circuit Court of Lake County, Illinois on March 31, 1999. The record contains another order filed that date directing the applicant to prepare, or cause to be prepared, qualified domestic relations orders to transfer her interest in certain marital property to her, and an order to her former husband to deliver that property.

The record contains an undated letter from the applicant to the clerk of the court requesting a copy of the Dissolution of Marriage Judgment and Order, and acknowledging that it was filed on March 31, 1999. The applicant was apparently aware that her previous marriage had been dissolved when she wrote that letter, as she requested that specific judgment and order and referenced the filing date. The record also contains a response to that undated letter. The response was dated January 6, 2000 and included copies of the dissolution order and judgment. This is yet further evidence that the applicant was then aware that her previous marriage had been dissolved.

The decision to deny the applicant's Form I-485 was sent to the applicant and her then attorney of record. The attorney's copy was returned as undeliverable. The applicant, however, signed for her copy on September 6, 2000. The applicant was on actual notice, on that date, that her Form I-485 Application to Adjust Status was denied, and constructive notice that her presence in the United States thereafter was unlawful.

In a letter, dated October 7, 2001, the applicant stated to her congressman that she did not receive "... any settlement at the divorce from the court . . ." She did not mention, in that letter, having received a notice that she had been granted LPR status.

The applicant also stated, in that letter, that she had filed a request for a copy of the record in this case pursuant to the Freedom of Information Act (FOIA), with which request USCIS had not yet

complied. The record contains a letter indicating that subsequently, on October 17, 2001, USCIS complied with the applicant's request for a copy of the record. The unsigned approval notice of August 26, 1999 was, presumably, included in that copy of the record. The record contains no evidence that, prior to receiving that copy of the record, the applicant had received a copy of that approval notice.<sup>1</sup>

The record contains a G-325 Biographic Information form filed by the applicant indicating that she left the United States on July 29, 2002, and another G-325 in which she stated that she returned to India and began to live there during August 2002. The applicant's departure from the United States marks the termination of her unlawful presence in the United States. The record appears to show that she has since remained in India.

In a letter faxed to her congressman on July 8, 2005, the applicant stated that she never received the unsigned August 26, 1999 approval notice, which counsel has stated she received during August of 1999. She attributed her failure to receive it to her having recently moved prior to that date. However, as stated previously, there is no evidence indicating that the notice was ever mailed. The applicant's admission confirms that the applicant believes that the notice was mailed only because she subsequently acquired a copy of it, apparently as part of the copy of the record provided to her on October 17, 2001.

The evidence demonstrates that the application never received a copy of the unsigned August 26, 1999 approval notice prior to October 17, 2001. Because she did not receive it, that letter did not engender any misunderstanding. The applicant timely received the denial of her Form I-485 application on September 6, 2000. Her presence in the United States became unlawful on that date. She knew or should have known that her presence was then unlawful. If she was unsure of the effect of that denial she was obliged to consult with counsel. The applicant has had advice of counsel at various times during these proceedings and has not claimed that they advised her inappropriately on this issue.

The AAO finds no support for counsel's assertion that the applicant misapprehended her status in the United States and that her unlawful presence was, therefore, inadvertent.

The applicant's unlawful presence in the United States began during September 2000, ended on July 29, 2002, and encompassed more than one year.

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

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

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<sup>1</sup> Counsel's assertion that the applicant received that notice during August of 1999 is not evidence. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

(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 applicant is inadmissible, pursuant to section 212(a)(9)(B)(i) of the Act, based on unlawful presence in the United States for a period greater than one year. The balance of today's decision will address whether waiver of her inadmissibility is available to the applicant and, if it is, whether it should be granted as a matter of discretion.

Counsel asserted that, in any event, waiver of the applicant's inadmissibility is appropriate because failure to grant the instant application for waiver would result in extreme hardship to the applicant's husband.

Section 212(a)(9)(B)(v) 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 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.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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).

In the brief submitted on appeal, counsel stated,

Though extremely valuable in its particular locale, [the applicant's husband's] specialized knowledge of regulatory matters and municipal government in New York City does not qualify him for employment in the foreign system of India. He has no knowledge of Indian municipal regulations or the Indian civil service system. His highly specialized skill set is not transferable to the job market in India, and if he were to have to move there, he would likely be unemployed or underemployed.

That the knowledge and skills of the applicant's husband's present job are peculiar to New York does not demonstrate that he would be unemployed or underemployed in India. That limitation merely indicates that he would be forced to change jobs, which would, in any event, likely follow if he were to move to India. The record contains no evidence that the applicant's husband, who has a bachelor's degree in computer science, would be unable to find suitable employment in India. Further, the applicant's husband would not be obliged to move to India by denial of the instant waiver application.

The applicant's husband stated, in a September 21, 2006 affidavit in the record, that separation from his wife has caused him distress, anxiety, and depression during the past two years. He states that he is unable to sleep well, engages in compulsive behaviors, and has lost weight. The applicant's husband stated that he has not consulted a psychiatrist because a stigma attaches to such consultation in his culture, especially for men. Counsel, however, provided no extrinsic evidence to support that assertion. The applicant's husband further stated that he and the applicant must have children soon, if they are to have any.

The applicant's husband stated that for two years he had consulted one spiritual counselor, who subsequently died, and that he now consults another spiritual counselor. The record contains no letter from the spiritual counselor the applicant's husband claimed, in his affidavit, to be currently consulting. The record contains a letter, dated September 19, 2006, from the wife of the spiritual counselor whom the applicant's husband claimed to have consulted for two years. She stated that

her husband had counseled the applicant's husband, and has since died. She further stated that she assisted in her husband's business and that her husband was prescribing Ayurvedic and herbal medicines to calm the applicant's "mentally disturbed condition." Other than the assertion of the deceased spiritual counselor's wife, the record contains no evidence that the applicant had then been diagnosed with depression. Further, the record contains no evidence that the spiritual counselor in question was qualified to prescribe drugs or to diagnose depression.

The record contains a report, dated August 18, 2006, from a psychologist. The psychologist stated that he interviewed the applicant's husband in order to prepare a report to be used in the instant proceeding. The psychologist stated that although the applicant and her husband tried to conceive when they were together, they have been unable. The psychologist reiterated some of the symptoms the applicant's husband listed in his own affidavit, and also stated that the applicant's husband has engaged in suicidal ideation. The psychologist asserted that further separation from the applicant would exacerbate the applicant's husband's symptoms.

Undated letters from the applicant's husband's parents, the applicant's husband's sister, and a friend of the applicant's husband, and a letter, dated May 8, 2006, from another friend of the applicant's husband all also suggest that the applicant's husband is depressed.

The psychologist further stated, based upon information provided by the applicant's husband, that the applicant's husband married the applicant two and a half years ago, but has only been with her only twice, for two months on each occasion, once immediately after they were married and once more recently. In a sworn affidavit dated May 10, 2006, the applicant's husband stated, "I have been with my wife a duration of three weeks only in each of the years, 2004 and 2005.

The applicant's husband's sworn statement that he has been with his wife for only three weeks on two occasions appears to conflict with the statement by the psychologist, based on information from the applicant's husband, that the applicant's husband has been with the applicant on only two occasions, each of which was of two months duration. Either the applicant's husband's statement is inaccurate or the psychologist's statement is inaccurate.

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 by 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).

The applicant has been married to her present husband for only about three years. During that time, they have never lived together. Although that does not preclude emotional attachment, neither does it suggest that the separation compelled by the applicant's inadmissibility causes her spouse extreme emotional hardship. The applicant's husband appears to assert that, six months after meeting and marrying the applicant, and having been in her presence for only three weeks, he is overwhelmed with depression and anxiety at her inability to reside with him in the United States. This scenario seems unlikely, and lacks substantiation in the record.

The applicant's husband has consulted a psychologist only one time, and only for the express purpose of obtaining a letter to use as evidence in the instant matter. The psychologist's report states that the applicant's husband is suffering from depression, which is manifesting itself through various symptoms, including suicidal ideation, but the psychologist's report did not suggest that the applicant's husband should undergo psychiatric treatment or psychological therapy, nor did it suggest any other treatment. The record does not establish that the applicant's husband is experiencing or will experience emotional hardship greater than that which is normal in similar situations.

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 husband faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is not permitted to enter 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.

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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her 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.