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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW DELHI, INDIA Date: MAY 07 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of India who was determined to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having sought admission to the United States through fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident (LPR) and the father of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Acting Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his LPR spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 28, 2007.

On appeal, the applicant asserts that the record establishes that his spouse will suffer extreme hardship if he is excluded from the United States.[1] A letter submitted on February 6, 2008 on behalf of the applicant indicates that a brief and/or additional evidence in support of the waiver request will be submitted for the record. As of this date, however, the record contains no additional evidence and is considered complete.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) **In general.** Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien . . . .

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

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[1] The AAO notes that the record includes a Form G-28, Notice of Appearance as Attorney or Representative, submitted by an attorney who states that she represents the applicant. The Form G-28, however, is not signed by the attorney and is, therefore, not properly filed. Accordingly, the AAO will consider the applicant to be self-represented, although all representations will be considered.

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:
>
> 1. the alien is excludable on the true facts, or
> 2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The record reflects that at a 1999 interview for a nonimmigrant visa, the applicant failed to reveal to the consular officer that he had violated the terms of the nonimmigrant visa previously issued to him by working in the United States. In failing to provide the consular officer with this information, the applicant shut off a relevant line of inquiry that would have resulted in the denial of his visa application. *Consular Letter*, dated July 29, 1999. Accordingly, the AAO finds the applicant to have sought a benefit under the Act through fraud or the willful misrepresentation of a material fact and to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

A waiver of a section 212(a)(6)(C)(i) inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission would impose extreme hardship on a qualifying relative, in this case the LPR spouse of the applicant. Hardship to an applicant or his or her children is not directly relevant to a determination of extreme hardship in section 212(i) waiver proceedings and will be considered only to the extent that it results in hardship to the qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Moralez,* 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 list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

> 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of proceeding contains, but is not limited to, the following evidence: statements on behalf of the applicant; statements by the applicant's daughter; medical documentation pertaining to the applicant's spouse; and copies of birth and marriage certificates. The entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant's daughter states that her mother has undergone surgery for a heart condition and that following surgery her mother is in need of care and that the applicant should be with her. The applicant's daughter states that her mother's surgeons have recommended complete bed rest following surgery. The applicant's daughter also asserts that her parents are in the last stage of life and should live together for the rest of their lives.

While the record contains medical records for the applicant's spouse that indicate she has undergone cardiac procedures requiring hospitalization, the AAO notes that the applicant's spouse's most recent procedure took place in January 2007 in India and that she has subsequently traveled to the United States, having been admitted as a lawful permanent resident on July 5, 2007. The applicant has submitted no additional information regarding his spouse's medical condition subsequent to her arrival in the United States. Without evidence that is probative of the applicant's spouse's medical condition and medical needs in the United States, the AAO is unable to determine how her health will be affected by the applicant's exclusion. The record also contains no evidence that the applicant's spouse is financially dependent on the applicant. The AAO notes that at the time of his immigrant visa interview, the applicant indicated that he was providing no financial support to his spouse in the United States. No other potential hardships are addressed by the applicant. Accordingly, the record does not support a finding that the applicant's spouse would experience extreme hardship if he were to be excluded and she remained in the United States.

As noted above, the applicant must also establish that a qualifying relative will experience extreme hardship if he or she relocates with the applicant. The applicant has not, however, indicated what impact(s) a return to India would have on his spouse. As such, the record also fails to demonstrate that the applicant's spouse would suffer extreme hardship if she were to return to India.

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 would face extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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.

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 under section 212(i) 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.