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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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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW DELHI, INDIA

Date:

MAY 07 2010

IN RE:

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:

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 was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). He is the spouse of a naturalized U.S. citizen and states that he is the father of two U.S. citizen children. 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 U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 30, 2007.

On appeal, counsel for the applicant's asserts that the Acting Field Office Director abused his discretion in denying the waiver application.

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 record indicates that the applicant presented a fraudulent document when attempting to enter the United States in 2000. Accordingly, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having sought to obtain a benefit under the Act through fraud or the willful misrepresentation of a material fact and must seek a waiver under section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission would impose extreme hardship on a qualifying relative, in this case the U.S. citizen spouse of the applicant. Hardship to an applicant or his or her children is not directly relevant to a determination of extreme hardship under section 212(i) of the Act and will be considered only to the extent that it affects 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*, 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, a statement from the applicant’s counsel, statements from the applicant, and a copy of an earnings statement for the applicant’s spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel asserts that it would be difficult for the applicant’s spouse to return to India. He contends that the applicant’s spouse’s family is in the United States and that she would have problems adjusting to life in India. Counsel also asserts that economic opportunities and access to educational opportunities for the applicant’s children are better in the United States. Counsel states that the applicant is having problems supporting himself in India. He also notes that the applicant’s spouse’s mother has health problems and that she and the applicant’s spouse take care of each other.

The record does not support counsel’s claims. It contains no documentation, e.g., published country conditions materials, that establish a lack of economic opportunities in India or demonstrate that the applicant is having problems supporting himself. The AAO notes that, at the time of his immigrant visa interview, the applicant indicated that he was working in his father’s business. The record also contains no evidence that establishes the medical conditions of the applicant’s spouse’s mother, their severity or that she requires the assistance of the applicant’s spouse. The record further fails to establish that the applicant’s children would not have adequate educational opportunities in India. Moreover, the AAO notes that the applicant’s children are not qualifying relatives in this proceeding and the record fails to establish how any hardship they might experience upon relocation would affect their mother, the only qualifying relative. The AAO also finds the record to lack

documentation, e.g., birth certificates, establishing that the applicant and his spouse are the parents of two U.S. citizens. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the AAO finds that the applicant has failed to establish that his spouse would experience extreme hardship if she returned to India.

Counsel states that the applicant's inadmissibility is resulting in financial hardship for his spouse, who, as the mother of two children, is barely surviving. Counsel asserts that the applicant is unable to send money to his spouse from India and that she would be better off financially if he were in the United States, working and helping her to support herself and the children. Counsel also states that the applicant's spouse and her mother have health problems that make it difficult for them to live without the applicant. Counsel's assertions are echoed by the applicant who reports that his spouse has many health and financial problems as a result of the birth of their daughter and that his mother-in-law has breathing problems. He also states that his son is having problems at school.

In support of the claim of financial hardship, the record contains an earnings statement for the applicant's spouse. While the AAO notes this evidence, it does not find it to offer sufficient proof of the financial circumstances faced by the applicant's spouse. The record contains no tax records or W-2 forms that would establish the applicant's spouse's annual income, nor any evidence of her monthly expenses and financial obligations. The record also lacks documentation that establishes the medical problems of the applicant's spouse or her mother. Further, as previously discussed, the record also fails to document that the applicant and her spouse have two U.S. citizen children. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the record also fails to establish that the applicant's spouse would suffer extreme hardship if the applicant's waiver request were to be denied and she remained in the United States.

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 he 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. In this case, there is nothing in the record that indicates that the applicant's spouse, whether she remains in the United States or relocates to India, will experience hardships that rise above those normally experienced by the relatives of excluded aliens. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the

Act. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.