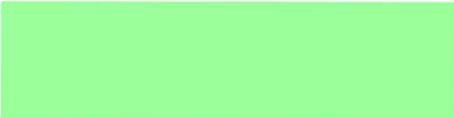


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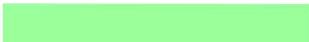
U.S. Citizenship
and Immigration
Services



DATE: **MAR 09 2013**

OFFICE: PHILADELPHIA, PA

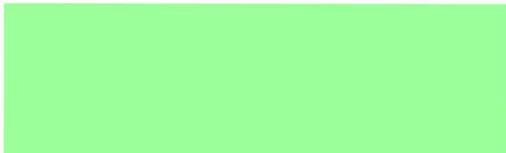
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IN RE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen and motion to reconsider. The motion to reopen is granted. However, the prior decision to dismiss the appeal is affirmed. The underlying waiver application remains denied.

The record reflects that the applicant is a native and citizen of India who was found 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 procured asylum in the United States by willful misrepresentation. The applicant is the spouse and father of U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that his inadmissibility would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated January 19, 2010. On appeal, the AAO also found the evidence of record to be insufficient to establish extreme hardship to the applicant's U.S. citizen spouse, his only qualifying relative. *Decision of the AAO Chief*, dated September 25, 2012.

On motion, counsel submits additional evidence relating to the hardships that would be suffered by the applicant's spouse if the applicant is removed from the United States. *Form I-290B, Notice of Appeal or Motion*, dated October 25, 2012.

The requirements for motions to reopen and reconsider are found at 8 C.F.R. §§ 103.5(a)(2) and (3):

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence

(3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Based on our review of the record before us, the AAO finds the new evidence submitted by the applicant to satisfy the requirements of a motion to reopen. Accordingly, the applicant's motion is granted.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(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 Act is inadmissible.

In that the applicant does not contest his inadmissibility, the AAO will limit our consideration of the record to his eligibility for a waiver under section 212(i) of the Act. The evidence submitted in support of that eligibility now includes, but is not limited to: counsel's brief on motion; an employment statement for the applicant's spouse; 2011 tax records; a death certificate for the applicant's spouse's father; information relating to Sikh marital customs; a list of the applicant's and his spouse's current financial obligations with supporting documentation; a medical statement relating to the applicant's spouse; psychological evaluations of the applicant's spouse and one of his sons; and documentation submitted in support of the applicant's appeal. The entire record has been reviewed and all relevant information considered in reaching a decision in this matter.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [Secretary] 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.

As already indicated, the applicant's spouse is the only qualifying relative for the purposes of this proceeding. Accordingly, any hardships that the applicant or other family members may experience as a result of his removal will be considered only to the extent they are found to affect his spouse. If the applicant is successful in establishing extreme hardship to his spouse, United States Citizenship and Immigration Services (USCIS) will assess whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996).

On appeal, the AAO found that while separation from the applicant might result in emotional, medical, financial and social hardship for his spouse, the record offered insufficient proof that such hardship would exceed that normally created by the separation of families. In response, counsel submits additional psychological evaluations of the applicant's spouse, an updated medical statement regarding her physical and mental health, documentation to establish the financial obligations that would face her in the applicant's absence and information on Sikh customs with regard to marriage. This new evidence will be considered in relation to that which has been previously provided to determine whether the record now demonstrates that the applicant's spouse would suffer extreme hardship if the waiver application is denied and she remains in the United States.

To establish the emotional hardship that his spouse would suffer in his absence, the applicant previously submitted a December 22, 2009 psychological evaluation prepared by licensed psychologist [REDACTED] who diagnosed the applicant's spouse with Major Depressive Disorder and Anxiety Disorder. In support of this diagnosis, counsel now provides an October 18, 2012 psychiatric report written by [REDACTED] who, counsel states, is treating the applicant's spouse on a monthly basis.¹ Counsel also submits a January 11, 2010 mental health diagnosis of the applicant's spouse from [REDACTED] in Amritsar, India. He further offers an October 22, 2012 statement from [REDACTED] the applicant's spouse's physician, regarding her mental and physical health.

[REDACTED] in his October 18, 2012 handwritten evaluation indicates that he previously saw the applicant's spouse in 2010 for depression and prescribed medication for her. He states that at the time of their 2012 interview, the applicant's spouse reported that she had been feeling nervous for the past five years and that she described the following symptoms: shaking, sweating, a rapid heartbeat, and shallow, fast breathing. [REDACTED] also reports that the applicant's spouse stated that she lacked energy, motivation or desire, and that she told him that she was not able to focus, concentrate or make decisions. He concludes that she is suffering from Major Depression and Psychosis, indicating that her depression is very severe at times. [REDACTED] also states that he is recommending therapy for the applicant's spouse and that she should continue with her current medication for the present. The 2010 statement from [REDACTED] consists of several handwritten lines that are largely illegible and the AAO is unable to determine his diagnosis of the applicant's spouse's mental state.

Although we recognize the medical knowledge that [REDACTED] and [REDACTED] bring to their analyses of the applicant's spouse's emotional or mental health, we nevertheless find both evaluations to be of limited value in this proceeding. Neither evaluation, and particularly that of [REDACTED] offers the discussion and detail required by the AAO to assess emotional hardship. While we note that [REDACTED] evaluation lists the symptoms reported by the applicant's spouse, it does not discuss their severity or their impact on her ability to function in her place of work or at home. Neither does he indicate the psychotic features he identifies in the applicant's behavior or how they affect or interact with her depression. Although counsel states in his brief that further evidence of [REDACTED] treatment of the applicant will be submitted, the record does not contain this documentation. Therefore, the evaluations of the applicant's spouse's mental health submitted on motion do not expand the AAO's understanding of the emotional impacts of the applicant's removal on his spouse.

We have also reviewed the October 22, 2012 statement from [REDACTED] who reports that the applicant's spouse has been his patient for approximately ten years and that she is suffering from anxiety, depression, headache and backache. [REDACTED] also indicates that the applicant's spouse

¹ Counsel has also submitted [REDACTED] October 22, 2012 evaluation of the applicant's son, [REDACTED] which finds him to be suffering from Major Depression, Recurrent, Moderate. However, as indicated above, the applicant's children are not qualifying relatives for the purposes of this proceeding and the record does not demonstrate how [REDACTED] depression has affected or is affecting his mother, the only qualifying relative.

previously had a hysterectomy as a result of abnormal uterine bleeding. However, [REDACTED] statement, like the preceding evaluations prepared by [REDACTED] and [REDACTED] provides no discussion of the severity of the applicant's spouse's depression and anxiety, nor does it indicate that the headaches and backaches from which she suffers affect or limit her ability to function. We also note that [REDACTED] observation regarding the applicant's spouse's hysterectomy appears to contradict information he provided in a December 28, 2009 letter, which was previously submitted for the record. In his 2009 statement, [REDACTED] indicated that the applicant's spouse had undergone a hysterectomy as a result of uterine cancer and that her condition was being monitored by her gynecologist. As a result, we do not find [REDACTED] 2012 statement to constitute conclusive evidence that the applicant's spouse has any physical or mental health condition that would result in hardship in the applicant's absence.

On motion, counsel also submits additional evidence regarding the applicant's and his spouse's financial circumstances. He provides a copy of their 2011 tax return, which, he states, offers proof that they have lost their business and filed for bankruptcy, a financial blow that can only be overcome through their combined efforts. Counsel also contends that the applicant continues to provide the majority of the couple's income and submits a statement from the applicant's spouse's employer that reports she earns only \$7.75 an hour. Also contained in the record is a list of the applicant's and his spouse's monthly expenses, as well as copies of their monthly homeowners' association fee statements and telephone, cable and utility bills. Counsel asserts that this evidence clearly demonstrates that the applicant's spouse would not be able to cover her expenses and provide "meaningful support" for her three children without the applicant.

While we note counsel's assertions regarding the applicant's and his spouse's bankruptcy and the loss of their business, we do not find the record to support these claims. The applicant has submitted no tax records for his business, nor any documentation relating to a bankruptcy or a business closure. In the absence of such documentation, his 2011 personal tax return, submitted without two tax schedules (Schedules D and K-1) that directly relate to his business income, is insufficient to establish his and his spouse's financial circumstances. Although we find counsel to indicate that additional evidence of the applicant's bankruptcy will be provided, this evidence is not included in the record before us.

The AAO acknowledges that the applicant provides the majority of the income reflected on his and his spouse's 2011 tax return and that the applicant's spouse's income of \$1,240 a month or \$16,000 a year is insufficient to meet the \$1,825 in monthly expenses listed in the expense report provided on motion. We also note counsel's assertion that, in the applicant's absence, his spouse would be unable to provide meaningful financial support to their three children, two of whom are minors.

However, we do not find the record, even with the submission of additional evidence, to establish the financial impact that the loss of the applicant's current income would have on his spouse. Although counsel has submitted utility, telephone and cable bills in support of the applicant's listing of the family's monthly expenses of \$1,825, there is no documentary evidence that relates to the remainder of the listed expenses, which account for \$1,300 of the total. We particularly note the absence of any documentation to support the monthly rental payment of \$450, as evidence in the record has previously indicated that the applicant and his spouse are homeowners, e.g., their

personal tax returns reflecting the payment of mortgage interest. As a result, we do not find the submitted list of expenses to establish the applicant's spouse's financial obligations in the applicant's absence.

Further, the record does not demonstrate that the applicant's spouse would be responsible for financially supporting her three U.S. citizen children. Instead, it indicates that the applicant's children are 25-, 21- and 20-years-of-age, and that, as indicated by the applicant's son, [REDACTED] in his October 22, 2012 interview with [REDACTED] the applicant's 25-year-old daughter and 21-year-old son no longer live at home. There is also no documentary evidence found in the record that establishes the applicant and his spouse are currently providing financial support to their two children who no longer live at home or that these children require such support.

The record also fails to demonstrate that the applicant's spouse's financial resources would be limited to her own income. No evidence in the record indicates that her older children would be unwilling or unable to assist her financially in their father's absence. Further, although counsel contends that the applicant would have difficulty obtaining employment in India, no documentary evidence, e.g., published country conditions reports on the Indian economy or unemployment, has been submitted to establish that he would be unable to find a job that would allow him to assist his spouse financially from outside the United States. 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). Therefore, we do not find the evidence submitted in support of the motion to reopen to overcome our finding that the record does not establish the financial impact of the applicant's removal on his spouse.

In response to the AAO's finding that the record did not establish that the applicant's removal from the United States would prevent his sons and daughter from marrying, counsel submits a printout of an online article on Sikh marriage customs and an October 15, 2012 statement from [REDACTED]. He also states that he plans to submit evidence of [REDACTED] expertise regarding South Asian cultural norms to overcome our finding that the record did not establish [REDACTED] as an authority on Sikh culture and its impact on the applicant's spouse's reaction to separation from the applicant.

In his October 15 statement, [REDACTED] reports that the applicant and his wife are members of the Sikh community and that they have three unmarried children. He further states that Sikh marriages are arranged by parents and that parents, as equals, must agree on the person their son or daughter will marry. Since the applicant's spouse would need the applicant to make a decision on any offers of marriage, [REDACTED] asserts, she would not be able to arrange their children's marriages on her own. He states that having both parents present throughout all cultural and religious functions is of great importance and allows them to fulfill their roles. The submitted article on Sikh marriage indicates that marriage in Sikh culture involves discussion between the bride and bridegroom, as well as their parents and relatives. It further reports the involvement and attendance of the parents of bride and groom in betrothal and marriage ceremonies.

While the AAO accepts the statement from [REDACTED] regarding the requirement that both parents of a bride or groom must agree on the person who is marrying their son or daughter and that the applicant's spouse would not be able to make that decision on her own, he fails to indicate that the applicant and his spouse could not conduct the process of selecting spouses for their children by telephone or online, or that this process could not be handled by the applicant's spouse's travel to India. Although counsel has previously indicated that travel to India would be traumatic for the applicant's spouse, we note that the 2010 psychiatric evaluation of the applicant's spouse appears to have been conducted in India, indicating that the applicant's spouse has visited India in the past. Accordingly, we do not find Sikh custom, as established by the record, to indicate that the applicant's children would not be able to marry unless he is allowed to return to the United States. We also do not find the applicant to have submitted new evidence demonstrating [REDACTED] expertise with respect to Sikh culture. Accordingly, we find no basis on which to reevaluate our findings regarding [REDACTED] assertions of the cultural challenges that would face the applicant's spouse if she is separated from the applicant.

Having considered the evidence submitted on motion and that previously provided on appeal, we continue to find the record to contain insufficient proof to establish that the denial of the waiver application would result in extreme hardship for the applicant's spouse if she remains in the United States.

On motion, counsel also submits additional evidence to establish that a return to India would result in extreme hardship for the applicant's spouse, including a copy of the 2011 death certificate for the applicant's spouse's father, which, he states, also indicates that her mother is deceased. Counsel further asserts that the applicant's parents and brother have died and that he, therefore, also has no immediate family in India. Without the help of family, counsel contends, the applicant and his spouse would be required to start over and would live a life of poverty. He asserts, therefore, that relocation would result in a worsening of the applicant's spouse's depression, both because of returning to India and because, in India, she would not be able to afford appropriate mental health treatment, even if such treatment were available. Counsel states that because of the applicant's spouse's advanced age and the difficulty she would find in obtaining employment, she and the applicant would most likely be dependent on whatever job he would be able to find.

We note the death certificate submitted for the record but do not find it to establish the death of the applicant's spouse's mother as well as that of her father. Further, although counsel indicates that additional death certificates will be submitted to establish that the applicant also has no immediate family living in India, no other death certificates are found in the record. We also observe that the record contains a birth certificate indicating that the applicant and his spouse have a fourth child, a son who was born in India in 1994 and who may still be residing there as he does not appear to have immigrated to the United States with his siblings. Accordingly, the record does not establish that the applicant and his spouse have no immediate family in India.

The record also fails to establish that the applicant and his spouse would live in poverty if they relocated to India or that, as a result, the applicant's spouse would be unable to obtain healthcare. It does not, as previously indicated, contain any published country conditions materials that establish the applicant or his spouse would not be able to obtain meaningful employment in India or that

healthcare would be unaffordable. 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. *Id.* Therefore, absent additional documentary evidence in support of the claims of hardship, the AAO concludes that the record on motion does not establish that relocation would result in extreme hardship for the applicant's spouse.

The documentary evidence submitted by the applicant in support of the motion to reopen has not established that his inadmissibility would result in extreme hardship for his U.S. citizen spouse. He, therefore, has not demonstrated eligibility for a waiver under section 212(i) of the Act. As the applicant is statutorily ineligible for relief, no purpose would be served by considering whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decision to dismiss will be affirmed, and the waiver application will remain denied.

ORDER: The prior decision dismissing the appeal is affirmed. The underlying waiver application remains denied.