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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

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H6

FILE: [REDACTED] Office: NEW DEHLI, INDIA

Date:

MAY 12 2010

IN RE: [REDACTED]

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, 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 the spouse of a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated February 25, 2008, the acting field office director found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The acting field officer director stated that the applicant entered the United States fraudulently on June 1, 1990, but did not make a finding of inadmissibility under section 212(a)(6)(C) of the Act. The acting field office director also found that the applicant failed to demonstrate extreme hardship to his qualifying relative. The application was denied accordingly.

In a statement dated March 20, 2008, the applicant states that his wife cannot support their two children in the United States by herself without his financial help, and that he cannot help support his family while he is in India. The applicant also states that his children are now eight and ten years old, they have been living in the United States their whole life, and they are doing well in school. He states that it would be a hardship for them to relocate to India.

The record indicates that the applicant entered the United States in June 1990 on a B2 tourist visa. Upon entering the United States the applicant filed for political asylum and was notified in 1992 that his asylum claim had been denied. On March 18, 1998, in lieu of removal, the applicant was given voluntary departure by an immigration judge in Dallas, Texas. He was to voluntarily depart the United States on or before July 16, 1998. The applicant did not depart the United States. In December 5, 2000 the applicant was removed from the United States. The AAO finds that the applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until December 5, 2000, the date of his removal from the United States, with the exception of voluntary departure period from March 18, 1998 to July 16, 1998. In applying for an immigrant visa, the applicant is seeking admission within ten years of her December 5, 2000 departure from the United States. Therefore, the applicant is 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. The AAO finds that the current record is unclear as to the basis for the acting field office director's finding that the applicant fraudulently entered the United States on June 1, 1990. As the AAO finds the applicant inadmissible under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States, we decline to reach the issue of whether the applicant is also inadmissible under section 212(a)(6)(C) of the Act. The AAO also notes that the record indicates that the applicant has a criminal record of three arrests. The record shows that the applicant was arrested

for driving without a license in October 1997, assault on December 30, 1997, and indecent exposure on August 1, 2000. The record does not indicate how these arrests were resolved.

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

(B) Aliens Unlawfully Present.-

(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.

The AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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 BIA

added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, “the most important single hardship factor may be the separation of the alien from family living in the United States”, and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record of hardship includes numerous statements from the applicant and his spouse and medical documents for the applicant’s spouse from a nursing and maternity home in India.

In her statements the applicant’s spouse states that she and her children are suffering extreme hardship from being separated from the applicant. She states that her children need their father in the United States and that she is struggling financially to care for them. In a statement dated September 15, 2007, the applicant’s spouse states that her father was helping her financially, but that he passed away in 2005. She also states that she receives help from an aunt and was living

in India until 2005. The applicant's spouse states further that her daughter is being treated for an iris infection in New York at the Hunt Point Multi Services Center, that they have recommended she receive an operation, but she cannot afford the operation in India. She states that she is suffering from severe mental tension, low blood pressure, and depression, and is being treated at the St. Manas Hospital in New York. She states that it is difficult for her and her children to live in India because of the pollution and the climate. In a statement dated November 10, 2007 she states that she has been going to every doctor for treatment for her children and is scared they will die in India as they cannot afford to return to the United States. She states that they are having problems adjusting to life in India and that the water is causing vomiting and dehydration.

As stated above, in a statement dated March 20, 2008, the applicant states that his wife cannot support their two children in the United States by herself without his financial help, and that he cannot help support his family while he is in India. The applicant also states that his children are now eight and ten years old, they have been living in the United States their whole life, and they are doing well in school. He states that it would be a hardship for them to relocate to India.

The medical documents submitted state that on October 10, 2007 the applicant's spouse was discharged from [REDACTED] in India after having been diagnosed with gastroenteritis and moderate dehydration. The AAO notes that these documents do not establish that the applicant's spouse or her children are suffering the kinds of chronic ailments as described by the applicant's spouse in her statements. Furthermore, no medical documentation regarding the applicant's spouse's treatment in New York for mental tension, low blood pressure, or depression has been submitted. In addition, the AAO notes that the most current statement on record indicates that the applicant's spouse and her children have returned to the United States.

The AAO acknowledges that every qualifying relative will experience hardship as a result of their family member being found inadmissible, but to qualify for a waiver under section 212(a)(9)(B)(v) of the Act the applicant must show that this hardship rises to the level of extreme hardship. To show extreme hardship the applicant must detail the hardship experienced by his qualifying relative and submit documentation supporting the hardship. The AAO notes that the record does not detail the hardship experienced by the applicant's spouse nor does it provide supporting documentation for the hardship claims. 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)). The AAO also notes that as stated above, hardship to the applicant's children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it is shown that hardship to the children is causing hardship to the applicant's spouse. The current record does not make this connection. Thus, the AAO must find that the current record does not establish that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility.

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 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.