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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: APR 20 2004

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:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and 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 under 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 attempted to procure admission into the United States by fraud or willful misrepresentation in July 1991. In May 1997, the applicant married a native of the Philippines who became a naturalized U.S. citizen in January 2001. The applicant is the beneficiary of an Approved Petition for Alien Relative. The applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) on February 2, 2002 based on his qualifying relationship as the spouse of a naturalized United States citizen. On March 22, 2002, the district director denied the waiver of inadmissibility. On November 18, 2002, the applicant's appeal of the denial was dismissed by the AAO. The applicant requests the instant waiver of inadmissibility as the son of a legal permanent resident of the United States in order to reside in the United States with his mother.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 application accordingly. *See* Decision of the Acting District Director, dated April 28, 2003.

On appeal, counsel contends that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] did not properly apply the evidence to the law, ignored evidence and misapplied the hardship standard. *See* Attachment to Form I-290B, dated May 7, 2003.

In support of these assertions, counsel submits a declaration of the applicant's mother, dated February 21, 2003; a copy of the resident alien card issued to the applicant's mother and a letter from a medical professional regarding the applicant's mother. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) 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.

Section 212(i) of the Act provides:

> (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.

The record reflects that the applicant arrived at San Francisco Airport in August 1991, without documentation, claiming to be Balbir Singh from Amritsar, India. On October 8, 1991, the applicant conceded inadmissibility to an immigration judge and filed a Request for Asylum using his alias. On July 29, 1992, the applicant's request for asylum and withholding of deportation was denied. On February 22, 1994, the Board of Immigration Appeals (BIA) remanded the applicant's record for reconstruction. On May 28, 1997, an immigration judge denied the applicant's Application for Asylum and Withholding of Deportation in a *de novo* hearing and ordered the applicant excluded and deported. On November 8, 2001, the BIA dismissed an appeal of the immigration judge's decision rendering that decision final. On December 15, 2001, the applicant filed a Motion to Stay Deportation in the Ninth Circuit Court of Appeals. The record reflects that, on February 18, 2003, the Ninth Circuit affirmed the BIA decision denying the application. *See* Letter to Mark Wallace, General Counsel, Bureau of Citizenship and Immigration Services from Paul Fiorino, Attorney, United States Department of Justice, Civil Division, dated May 15, 2003.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's mother. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the BIA deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel asserts that the applicant's mother would face extreme hardship if she relocated to India in order to reside with the applicant. Counsel contends that medical care in India costs more than the applicant's mother can afford. *See* Declaration of Mohini Devi, dated February 21, 2003. The AAO notes that this assertion constitutes the only evidence in the record to support the assertion of extreme hardship in the event that the applicant's mother returns to India. The costs of medical care in India standing alone do not support a finding of extreme hardship.

Further, counsel does not establish extreme hardship to the applicant's mother if she remains in the United States maintaining access to affordable health care. The AAO notes that, as a legal permanent resident of the United States, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel submits a letter from a registered nurse practitioner stating that the applicant's mother is unemployed and does not have medical insurance. According to the letter, the applicant's mother relies on the applicant to finance her medications and doctor visits. *See* Letter from Ardell Childress, RNP, dated February 21, 2003. The record does not establish that the applicant would be unable to continue paying for his mother's medical expenses from a location outside of the United States. Moreover, the AAO notes that 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. The record reflects that the applicant's mother suffers from high blood pressure and hypertension, which are controlled through prescription medication. *See Id.* The record does not demonstrate that the applicant's mother suffers from any debilitating or life threatening diseases that require constant medical attention.

The applicant's mother states that she will not only be separated from the applicant if the waiver is denied, but will also suffer separation from her granddaughter for whom she cares while the applicant works. *See* Declaration of Mohini Devi. United States 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant and the applicant's daughter. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parent 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(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.