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U.S. Citizenship
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Services

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FILE:

Office:

KANSAS CITY

Date:

OCT 27 2008

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (the 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The district director, Kansas City, MO denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, [REDACTED] is a native and citizen of Bangladesh who applied for a student visa, on July 13, 1988, using false school certificates, and subsequently applied for adjustment of status. In order to remain in the United States with his legal permanent resident (LPR) spouse, [REDACTED] the applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for having sought to procure admission into the United States by fraud or willful misrepresentation.

The record reflects that [REDACTED] used false school certificates to obtain a student visa and entry into the United States in 1988. As a result of this misrepresentation, the director found the applicant to be inadmissible to the United States. *District Director's Decision, dated February 25, 2005.* The district director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, counsel submits a brief and additional documentation. The record includes the following: a hardship statement from [REDACTED] a copy of [REDACTED] green card; the couple's marriage certificate; Ms. [REDACTED] birth certificate; proof that [REDACTED] father and brother are U.S. citizens (USC's); proof that Ms. [REDACTED] sister is an LPR; proof that [REDACTED] mother is deceased; proof that [REDACTED] sister is a USC; evidence that [REDACTED] obtained his status in Canada as a refugee; documentation on the processing times for relative applications in Canada; general sponsorship requirements in Canada; specific sponsorship amounts and U.S./Canada currency conversion; documentation on unemployment rates in Canada; documentation on unemployment rates in the United States; information on a medical evaluation of Ms. [REDACTED] from Saint Louis University Hospital; a Zoloft prescription for [REDACTED] a letter from [REDACTED] from the Barnes Jewish Hospital with appointment notices and prescriptions for migraine headaches; a letter from [REDACTED] from St. Louis County Health; prescription for asthma medications; evidence that [REDACTED] serves at as a translator [REDACTED] medical appointments; a current paystub of [REDACTED] past pay stubs of [REDACTED] a rent check; credit card and utility bills; a letter form [REDACTED] of SLUCare; The AAO reviewed the record in its entirety before issuing its decision.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if –

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- (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

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, supra* at 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 the presence of an LPR or USC spouse or parent in this country; the qualifying relative's family 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 health conditions, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. See *Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

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).

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).

Counsel asserts that [REDACTED] will suffer extreme hardship, psychologically, emotionally and financially, if her husband's waiver application is denied. *Brief dated March 23, 2005.*

Hardship the applicant himself experiences upon denial of his application for admission is not considered in section 212(h) waiver proceedings. Hardship the applicant's USC or LPR children experience is also not considered except in relation to how it affects the qualifying relative, in this case, the applicant's LPR wife.

[REDACTED] states that she will suffer extreme hardship if her husband is compelled to leave the United States and go live in Canada. See [REDACTED] *hardship statement.*

██████████ asserts that she cannot take care of herself, as she relies heavily on her husband due to her limited ability to speak English. *Hardship statement at page 1.* She states that she suffers from major depression and is taking medication to treat her depression. *Id. at 3; See also psychiatric intake summary from ██████████ of The Physicians of St. Louis University Department of Psychiatry, dated October 21, 2003; Zoloft Prescription dated February 21, 2005; and Letter from ██████████ dated March 10, 2005.* She states that her husband helps her make purchases, go to the doctor, and generally maneuver in her daily life. She does not know how to drive. Her husband drives her to the grocery store. *Hardship Statement at 1.* ██████████ states that she suffers from debilitating migraine headaches and that her husband drives her to her doctor's appointments and translates for her at the doctor's offices. *Note From St. Louis County Health.* She states that she also suffers from asthma and relies on her husband to describe her symptoms to doctors and make requests for changes in medicine. ██████████ that she tried to work as an adult, but missed too much work because of her migraines and had to quit her job. *Hardship Statement at 1.* She states that she now stays at home while her husband works. She states that if her husband were not here, she would be unable to pay for her monthly expenses. ██████████ states that neither she, nor her husband, has family or close relatives in Canada and that ██████████ cannot return to Bangladesh because he is refugee from that country. *Id. at 2.* She states that all of her and her husband's close family members live in the United States. ██████████ parents are deceased and he has one USC sister living in the United States. ██████████ states that her mother is deceased and that her father is a USC. Her sister, an LPR, and her sister's husband, live with ██████████ and ██████████ has another brother who is an LPR and three other siblings who are in the process of obtaining their residency. *Id. at 2.*

██████████ fears that if she leaves the United States and loses her residency, she would be unable to obtain a visitor's visa to visit her family here in the United States. *Id.* ██████████ fears that because of the high unemployment rate in Canada, her husband would be unable to find a job that would allow him to sponsor her for her Canadian residency. *Id.* ██████████ states that she would be violating several important religious tenets if she went to live in Canada with her husband, including being separated from her extended family. *Id. at 3.* She states that if he moves to Canada first, while he petitions for her, that if they are separated for more than four months, they will effectively be divorced under Muslim law. She states that theirs was an arranged marriage and that, if she stays and he goes, she will be unable to find another mate. She states that her family does not have enough money to overcome her status as a divorced woman. *Id.* She states that she has an extremely difficult time dealing with stress and does not know what will happen to her if she has to be separated from her husband or from her sisters and extended family.

Counsel asserts that the district director incorrectly applied a stricter standard than the required extreme hardship standard. Counsel asserts that the district director only considered ██████████ family ties in the United States and her medical conditions but failed to consider the following *Cervantes* factors: her lack of family ties outside of the United States and the financial impact of her departure. Counsel further asserts that the district director failed to consider the following additional hardship factors in ██████████ case: her limited knowledge of English, the fact that her departure would result in the loss of her legal permanent residence; the religious implications of separation and relocation; and the possibility that ██████████ may not meet the financial requirements to sponsor his wife in Canada. Counsel asserts that all factors in the case must be considered in the aggregate and that, when viewed in this way, ██████████ will suffer extreme hardship if her husband's waiver application is denied.

Counsel asserts that [REDACTED] psychological and other serious medical conditions alone amount to extreme hardship, as they are well beyond the normal economic and social disruptions typically experienced by a qualifying relative. Counsel asserts that when these conditions are added to the fact that all of her close relatives live permanently in the United States and she has no family in Canada; the fact that she is unable to work because of her debilitating migraines; the fact that she speaks a limited amount of English and depends on her husband to translate for her at doctor's appointments; and the fact that she will lose her LPR status if she moves to Canada; the applicant has demonstrated that his USC wife will suffer extreme hardship if his Form I-601 is denied.

The record contains medical documentation to show that [REDACTED] suffers from severe migraine headaches, serious asthma, and depression. [REDACTED] at the Barnes-Jewish Hospital Connect Care Neurology Clinic states that [REDACTED] suffers from debilitating migraines that prevent her from being productive and performing simple daily activities. See [REDACTED]'s letter, dated March 10, 2005. [REDACTED] states:

If her husband was away and she were alone with the baby, she would undoubtedly suffer from stress and possibly worsening depression which would clearly exacerbate her migraines.

It would cause an intolerable amount of suffering to be without medication. It would be dangerous to abruptly stop her medications after moving. In the worst case, severe migraines may cause stroke and it could be dangerous if she were unable to receive immediate healthcare if she began to have focal neurologic symptoms. Additionally, [REDACTED] carries the diagnosis of depression and sees another doctor for this problem. Migraines, especially if untreated, will likely worsen depression.

In my opinion, I do not think it safe for [REDACTED] to be away from her husband for any period of time beyond a few days. Additionally, a period of time without access to healthcare in another country could be life-threatening.

Emphasis added.

[REDACTED] from the St. Louis County John C. Murphy Health Center states that [REDACTED] is her patient and that she needs follow up care and regular office visits for her various medical conditions, including chronic asthma (exacerbated by cold exposure), difficult-to-control migraine headaches, and depression. [REDACTED] states that [REDACTED] needs to maintain regular visits to the Center and take and obtain her medications as directed on a regular schedule. See [REDACTED]'s letter dated March 16, 2005. Dr. [REDACTED] further states:

Failing to do so for a short time could have serious consequences. Inability to obtain medical care or medications (even for a few weeks) could cause worsening depression, asthma exacerbation, *both which may be potentially fatal.*

Emphasis added.

The diagnostic impression from a psychiatric intake summary concluded that [REDACTED] exhibited the signs of major depressive disorder and that her main stressor was her husband's pending removal from the United States. *See psychiatric intake summary from [REDACTED] of The Physicians of St. Louis University Department of Psychiatry, dated October 21, 2003.* The psychiatrist stated that [REDACTED] is dependent on her husband and that she exhibited "passive suicidal ideation." The psychiatrist stated that [REDACTED] needs medical management and supportive psychotherapy. The record also contains a Zoloft prescription for Ms. [REDACTED] dated February 21, 2005.

Upon a complete review of the evidence of record, the AAO finds that [REDACTED] has established that denial of his Form I-601 would result in extreme hardship to his LPR wife.

This case presents several unusual factors that are beyond that which would normally be expected to occur upon denial of a Form I-601. On the one hand, the country to which [REDACTED] would go to live, Canada, is not a country usually considered a difficult place to live. On the other hand, [REDACTED] suffers from several, well-documented and severe physical and psychological conditions that preclude her from either being separated from her husband for an period of time or moving to Canada to avoid separation from her husband. The record establishes that [REDACTED] helps [REDACTED] with help in her daily living. She is unable to work, unable to drive, and unable to speak English well enough to communicate with all the doctors she sees regularly. [REDACTED] has articulated and several doctors have confirmed that she would suffer severe physical and psychological hardship if her husband's Form I-601 is denied. The most compelling of the doctor's letters stated that a brief separation from her husband or time in Canada without access to her medications and follow-ups with doctors could prove fatal to [REDACTED]. In addition, the record indicates that [REDACTED] has no close family ties or contacts in Canada and that the rest of her close family lives in the United States. *See [REDACTED] father's naturalization certificate; her brother's U.S. passport; [REDACTED] sister's green card; and [REDACTED] mother's death certificate.* These serious medical conditions along with the lack of emotional support in Canada and the fact that [REDACTED] would abandon her permanent residence status if she relocated to Canada establish that the cumulative physical, psychological, and emotional effect on [REDACTED] would result in hardship beyond that which is normally experienced in cases of inadmissibility.

A discounting of the hardship [REDACTED] would face in either the United States or Canada or Bangladesh if [REDACTED] were refused admission is not appropriate. Given the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, the AAO finds that the applicant has established that his wife would suffer extreme hardship if his waiver of inadmissibility is denied. In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The AAO must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations

presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." See *Matter of Mendez-Morales*, *supra* at 300 (BIA 1996). (Citations omitted).

The adverse factors in the present case are the applicant's misrepresentation, for which he now seeks a waiver, and years of unauthorized presence.

The favorable and mitigating factors are the extreme hardship to his wife if he were refused admission and his supportive relationship with his wife, evidenced by her hardship statement in the record.

The AAO finds that, although the misrepresentation the applicant committed was serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.