



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA Date:

JUL 17 2007

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application, and a subsequent appeal was rejected by the Administrative Appeals Office (AAO). The AAO will reopen the matter. The appeal will be dismissed and the application will be denied.

On May 16, 2006, the AAO rejected the applicant's as untimely filed. The AAO finds that Citizenship and Immigration Services (CIS) incorrectly rejected the filing of the application due to a misprint on the fee check, which resulted in the untimely receipt of the applicant's appeal. The AAO is therefore reopening the matter *sua sponte*.

The applicant is a native and citizen of Bangladesh who is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a lawful permanent resident. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse.

The district director concluded that the applicant had 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) accordingly. *Decision of the District Director*, dated May 11, 2005.

The record reflects that, on April 30, 2002, the applicant pled *nolo contendere* to and was convicted of felony perjury in violation of section 118 of the California Penal Code (CPC). The applicant's sentence was suspended in favor of 3 years probation and 3 days in jail. On November 20, 2003, the applicant's probation was terminated. On July 12, 2004, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his wife.

On appeal, counsel contends that the district director abused her discretion by failing to weigh the submitted evidence and consider it in the aggregate in determining extreme hardship. *See Counsel's Brief*, dated June 2, 2005. In support of the appeal, counsel submits the referenced brief, updated affidavits from the applicant and his spouse and copies of country conditions reports previously provided. The entire record was reviewed and considered in rendering a decision in this case.

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

(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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

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

....

- (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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction for felony perjury, a crime involving moral turpitude. Counsel does not contest the district director's finding of inadmissibility, but contends that, despite the conviction for perjury the applicant did not attempt to defraud anyone to obtain a benefit to which he was not entitled.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

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 alien has established extreme hardship to a qualifying relative. 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. 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).

Since the applicant's wife is a lawful permanent resident and is not required to reside outside the United States as a result of the denial of the applicant's waiver, extreme hardship must be established whether she resides in the United States or in Bangladesh.

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).

The record reflects that, on April 18, 2003, the applicant married his spouse, [REDACTED] [REDACTED] is a native and citizen of Mexico who became a lawful permanent resident in 2004. The applicant and [REDACTED] do not have any children together. The applicant has a 19-year old son from a previous marriage who is a native and citizen of Bangladesh who does not appear to have any legal status in the United States. The record indicates that the applicant is in his 40's and [REDACTED] is in her 30's.

In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), the Ninth Circuit Court of Appeals (the Ninth Circuit) held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of the hardship factors in the present case. However, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon removal. The Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of removal to constitute “extreme hardship.”

Counsel asserts that, in determining whether extreme hardship had been established, the district director relied upon case law which was clearly distinguishable from the applicant’s case. The AAO notes that while the facts in the case law referenced in the district director’s decision may not be identical to those in the present case, the district director correctly cited these precedents because they set forth factors and findings in regard to “extreme hardship.” These precedents offer insight into what type or combination of hardships constitute extreme hardship to a qualifying relative.

Counsel, on appeal, does not assert that [REDACTED] would suffer extreme hardship if she were to remain in the United States without the applicant. [REDACTED] in her affidavits, states that the district director did not consider the real bond and commitment that a marriage and family is about. She states that, even though they have been officially married since 2003, the applicant has been her partner for the past 15 years and that he has given her unconditional tender love and has always been there to guide and support her through the hard times. She states that the applicant is not only the person who supports her living and emotional necessities, but that he is her heart and the source of her life. She states that to deny the applicant’s waiver would be catastrophic to her emotionally and financially. She states that it would impede the pursuit of her goals and dreams in this country. She states that the applicant is the one who is responsible for all of their expenses and pays for her school tuition and fees, since she enrolled in college in 2004. She states that through his support of her studies she feels empowered through her education and if the applicant is denied a waiver she will have to postpone her studies indefinitely. She states that it would not be easy for her financially to survive in the United States because of her lack of skills and she would have to live with the uncertainty of not being able to flourish in the United States and pursue her goals.

While the AAO notes that [REDACTED] may have to lower her standard of living, the record does not contain any documentary evidence that demonstrates that [REDACTED] would be unable to find full time employment sufficient to support herself without the financial support of the applicant. Moreover, the record reflects that [REDACTED] has family members in the United States, such as her adult siblings, who may be able to assist her financially or physically in the absence of the applicant. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support herself without additional income from the applicant, even when combined with the emotional hardship described below.

There is no evidence that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly faced by aliens and families upon removal. Although the AAO notes that [REDACTED] indicates that separation from the applicant would be emotionally catastrophic for her, the record offers no evidence, e.g., the evaluation of a mental health or other medical professional, in support of her assertion. The AAO acknowledges that, if the applicant is removed from the United States, [REDACTED] may be unable to further pursue her college studies. This, however, is also not a hardship that is beyond those commonly suffered by aliens and families upon removal. Additionally, the record indicates that [REDACTED] has family members, such as her adult siblings, in the United States who may be able to assist her physically or emotionally in the absence of the applicant.

Counsel asserts that, while she was born and raised in Mexico, [REDACTED] has lived in the United States for the past 16 years where she has close family ties, such as her siblings. [REDACTED] mother regularly visits from Mexico. Counsel asserts that [REDACTED] has no family ties to Bangladesh and she would be moving to a very poor country where 70 percent of the workforce is employed in agriculture. Counsel asserts that violence and discrimination against women remain a serious problem in Bangladesh. Counsel asserts that [REDACTED] would suffer financially and fearful for her safety if she were to relocate with the applicant to Bangladesh.

[REDACTED], in her affidavits, states that she is extremely close to her siblings as a result of the loss of her father at age 15 and two of her siblings at age 17. She states that she does not want to jeopardize the closeness and support that the family has for one another and does not want to see her mother go through the pain of losing another child since the distance between the Mexico and Bangladesh is so far. She states that with the war stress that is present in Bangladesh these days it would not be safe for her in Bangladesh. She states that she especially fears for her safety as a woman in Bangladesh because there is violence and discrimination against women there. She states that women are treated as second-class citizens and mostly only have manual labor jobs available to them. She states that she would feel isolated in a country that does not share her ideals and traditions.

Having analyzed the hardships counsel and [REDACTED] claim [REDACTED] would suffer if she were to accompany the applicant to Bangladesh, the AAO finds that they do not constitute extreme hardship. Counsel and [REDACTED] assert that [REDACTED] would find it financially difficult in Bangladesh due to the agricultural nature of the country and the limited job offerings available to women. An inability to pursue a chosen profession is not a hardship that is uncommon to a spouse accompanying an applicant to a foreign country. Moreover, the AAO notes that the country conditions reports submitted to support counsel and [REDACTED] statements are dated 1999. Current country conditions reports indicate that many new jobs have been created in the industry and investment sections, most specifically for women. *U.S. Department of State, Background Notes: Bangladesh, May 2007*, www.state.gov/r/pa/ei/bgn/3452.htm. The record does not demonstrate that [REDACTED] and the applicant would be unable to obtain any employment in Bangladesh and economic detriment of some type is not unusual or extreme. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). As discussed above, there is no evidence in the record to suggest that Ms. Reyes suffers from a physical or mental condition that could not be medically treated in Bangladesh. The AAO acknowledges evidence of violence against women in Bangladesh. However, the evidence indicates that this violence is at the hands of the woman's family members and [REDACTED] has not claimed that she would suffer any violence at the hands of the applicant or that there are other family members in Bangladesh who would pose a threat to her. [REDACTED] did not identify what war in Bangladesh would affect her or provide any documentation to support her statement. Further, the AAO finds the

Department of State to have issued no general travel advisory for Bangladesh and its consular information sheet on Bangladesh warns U.S. citizens only against travel to the Chittagong Hill Tracts and Cox's Bazar district, areas in which the record does not indicate the applicant would reside. *U.S. Department of State, Consular Information Sheet: Bangladesh*, May 1, 2007. While the hardships that would be faced by [REDACTED] in relocating to Bangladesh--adjusting to the culture, economy, environment, separation from friends and family, and an inability to obtain the same opportunities she would receive in the United States--are unfortunate, they are what would normally be experienced by any spouse accompanying a removed alien to a foreign country. Additionally, as previously noted, [REDACTED], as a lawful permanent resident, is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, she would not experience extreme hardship if she remained in the United States without the applicant.

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 the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS, Supra.*; *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent spouse as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). 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. However, the AAO does note that counsel's arguments in regard to the circumstances surrounding the applicant's conviction for felony perjury would be a factor in deciding whether the applicant merited a waiver as a matter of discretion.

As indicated by counsel at the time of filing, the applicant is also inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an applicant who has been unlawfully present in the United States for more than one year and is seeking admission within 10 years of his last departure. The record indicates that a prior legalization application, Application for Status as a Temporary Resident Pursuant to Section 210, filed by the applicant was denied on August 23, 1991, and that an appeal of the denial was dismissed on May 27, 1997. The applicant, therefore, accrued unlawful presence from April 1,

1997, the date of enactment of unlawful presence provisions under the Act, until July 25, 2003, the date on which he filed an affirmative application for adjustment of status. In that a waiver of unlawful presence under section 212(a)(9)(B)(v) of the Act also requires an applicant to establish that a qualifying relative would suffer extreme hardship as a result of removal, the AAO concludes that the applicant in the present case has failed to demonstrate eligibility for a waiver of his unlawful presence.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed and the application is denied