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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

712

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: DEC 10 2008

IN RE: Applicant: [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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bangladesh 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant attempted to enter the United States using a photo-altered passport in 1990. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with his U.S. citizen wife and children.

The director concluded 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) accordingly. *Decision of the Director*, dated July 22, 2006.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from Counsel on Form I-290B*, dated August 21, 2006. Counsel contends that the director failed to adequately consider all of the evidence submitted, including reports on conditions in Bangladesh. *Id.* at 1. Counsel further contends that the director failed to properly consider the impact hardship to the applicant's children will have on the applicant's wife. *Id.*

The record contains a brief from counsel; an assessment of the applicant's family conducted by a licensed clinical social worker; a statement from the applicant's wife; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's marriage certificate; copies of the applicant's sons' birth certificates; copies of tax documents for the applicant and his wife; a copy of a birth record for the applicant; documentation of the applicant's employment; an interest income report for the applicant's wife; a copy of the applicant's passport and Form I-94; a copy of a lease for the applicant from 2001; bank statements for the applicant and his wife, and; documentation in connection with the applicant's attempted entry to the United States using an altered passport. The entire record was reviewed and considered in rendering this decision.

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

- (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 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.

The record reflects that on September 30, 1990 the applicant attempted to enter the United States using an altered passport. Specifically, he presented a passport in which his photograph had been substituted for the original. Accordingly, the applicant attempted to procure admission into the United States by fraud or willfully misrepresenting a material fact (his true identity.) The applicant 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). The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from a 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 hardship suffered by the applicant's wife. 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 Board of Immigration Appeals 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.

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).

On appeal, counsel contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from Counsel on Form I-290B*, dated August 21, 2006. Counsel contends that the director failed to properly consider the impact hardship to the applicant's children will have on the applicant's wife. *Brief from Counsel*, dated August 21, 2006. Counsel references an assessment of the applicant's family conducted by a licensed clinical social worker to show that the applicant's children will suffer emotional consequences due to the applicant's absence, which will negatively impact the applicant's wife. *Id.* at 1 (quoting *Assessment from Licensed Clinical Social Worker*). Counsel asserts that conditions in Bangladesh are poor, as evidenced by a Consular Information Sheet and reports from the U.S. Department of State. *Id.* at 2-3. Counsel contends that the applicant's wife will experience hardship if the applicant returns to Bangladesh alone, or if she should relocate there herself. *Id.*

The applicant provided an assessment from _____ a licensed clinical social worker, evaluating his family and the impact his immigration situation is having on them. _____ provided that she interviewed

the applicant and his family one time in a visit to their home. *Assessment from Licensed Clinical Social Worker* at 1. She explained that the applicant, his wife, and his sons live in a two-family home, and that the applicant's wife's parents, two brothers, sister-in-law, nephew and niece live in the unit upstairs. *Id.* She indicated that the applicant's family purchased their home.¹ *Id.* at 4. ██████ stated that the applicant's possible relocation to Bangladesh is causing the family distress, and that the applicant's wife is suffering from reactive depression and anxiety. *Id.* at 2. ██████ explained that the applicant's wife studied five years to be a professional singer, but that she is a stay-at-home mother. *Id.* at 3.

stated that the applicant is active in his sons' lives, as he takes them to a local mosque and he plays sports with them. *Id.* She stated that the applicant's sons share a close relationship with their cousins who reside upstairs and in the neighborhood. *Id.* at 3-4. She explained that the applicant's sons have interests that are common to American children, and that the applicant's elder son, age 9, performs well in school. *Id.* at 5. She provided that the applicant and his wife wish for their sons to go to college in the United States. *Id.* at 5-6.

██████ asserted that the applicant would have difficulty securing comparable employment in Bangladesh, thus the applicant's wife and sons would experience serious economic challenges should they relocate with him. *Id.* She stated that the applicant is concerned about his family's safety and health in Bangladesh due to sanitation conditions, crime, and a lack of health care. *Id.*

indicated that the applicant's wife is having significant emotional difficulties due to the prospect of residing in the United States without the applicant, or relocating to Bangladesh. *Id.* at 7. She stated that the applicant's wife may develop major clinical depression should the applicant be compelled to depart the United States. *Id.* She provided that the applicant's children have not been informed of the applicant's immigration difficulties, but that they expressed sadness when requested to consider the impact of the applicant leaving the United States. *Id.* at 7-8.

The applicant's wife stated that she and the applicant have been married since September 5, 1995. *Statement from Applicant's Wife*, dated May 16, 2006. She provided that she has resided in the United States for 11 years. *Id.* at 1. She indicated that she has limited education, and that she has only worked outside the home briefly for a few months in retail stores. *Id.* She explained that her entire immediate family resides in the United States and she is close with them, thus she would suffer emotional hardship should she be separated from them. *Id.* She emphasized that she and the applicant have no skilled work experience in Bangladesh, thus they would have limited employment options there. *Id.* She stated that she and the applicant's sons have health insurance in the United States due to their low income, and they would lose it and have problems securing adequate health care in Bangladesh. *Id.* at 1-2. The applicant's wife explained that crime is bad in Bangladesh and that she would have problems as a woman in a male-dominated society. *Id.* at 2.

The applicant's wife indicated that, should she remain in the United States without the applicant, she would have economic problems due to the need for childcare and her lack of access to skilled positions. *Id.* She provided that she would be compelled to rely on distant relatives. *Id.*

¹ From the assessment, it is not clear whether ██████ states that the applicant and his wife purchased the home, or whether the applicant's wife's family purchased the two-unit home in which they all reside.

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. The record contains references to the applicant's wife's prospective financial situation should the applicant depart. However, the applicant has not described his household's regular expenses, thus the AAO is unable to determine his wife's economic needs. For example, the record reflects that the applicant's wife's family or the applicant and his wife own the home they reside in. It is unclear whether the applicant's wife would be compelled to pay rent or a mortgage should the applicant depart. The applicant's wife provided that she would require childcare services, but it is not clear whether she could obtain assistance with childcare from her family members who reside in the same house. The applicant's wife explained that she has limited education and employable skills, and thus she relies on the applicant for financial support. However, the applicant has not shown that his wife would be unable to meet her or her children's economic needs alone. She stated that she has performed retail work, thus it is evident that she is capable of employment outside the home. The record further contains a statement of interest earnings for the applicant's wife. The applicant has not provided documentation or an explanation to clearly reflect his wife's existing economic resources that may serve to help her meet her and her children's needs.

The applicant's wife indicates that she would experience economic hardship should she return to Bangladesh with the applicant. However, while the AAO acknowledges that the applicant and his wife may have fewer unskilled employment options in Bangladesh, the applicant has not established that they would be unable to meet their economic needs.

The applicant's wife stated that she will experience emotional hardship should she be separated from the applicant. This assertion is supported by the assessment from [REDACTED]. However, the single assessment is of limited use, as it was conducted for the purpose of this proceeding, and does not represent treatment for a mental health disorder. The applicant has provided no evidence that his wife received or required a follow-up evaluation from a mental health professional. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant's wife, it does not show that, should the applicant depart the United States, his spouse will suffer emotional consequences beyond those ordinarily experienced by families of those who are deported.

Counsel asserts that the applicant's wife will experience emotional hardship due to the hardship of the applicant's two sons. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation.

The AAO recognizes that the applicant's wife will endure significant emotional consequences as a result of separation from the applicant should she remain in the United States. The AAO further acknowledges that the applicant's wife's hardship will be compounded due to sharing in her sons' loss of the applicant's daily presence. However, while the AAO appreciates the emotional and economic challenges of acting as a single parent and caring for children alone, the applicant has not established that his wife will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of deportation or exclusion.

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, *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. Thus, the applicant has not shown that his wife's emotional hardship will rise to the level of extreme hardship.

Counsel contends that reports show that conditions in Bangladesh are poor, such that they pose a risk to the applicant, as well as the applicant's wife and sons. Counsel cites a public announcement issued by the U.S. Department of State regarding bombings that occurred in 2005, and a Consular Sheet that describes conditions in Bangladesh including crime and the availability of medical services. These documents reflect risks to U.S. citizens in certain areas of Bangladesh, though they do not establish that all areas involve imminent risk of harm to the applicant or the applicant's family members. The Consular Sheet supports that medical services are not at the same standard as those in the United States. Due to harsh conditions in Bangladesh, the applicant has shown by a preponderance of the evidence that his wife would experience extreme hardship should she relocate there. However, as the applicant has not shown that his wife would experience extreme hardship should she remain in the United States, he has not shown that denial of the present waiver application "would result in extreme hardship" as required by section 212(i)(1) of the Act.

All instances of prospective hardship to the applicant's wife have been considered separately and in the aggregate. Based on the foregoing, the applicant has not shown that denial of the present waiver application would result in extreme hardship to his wife. 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)(6)(C) 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.