



U.S. Citizenship
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FILE: [REDACTED]

Office: NEW DELHI, INDIA

Date: SEP 19 2005

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:



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

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge, 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 Bangladesh 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 10 years of his last departure from the United States. The applicant is married to a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Acting Officer-in-Charge*, dated May 25, 2005.

On appeal, counsel asserts that the acting officer-in-charge ignored much of the evidence presented, gave insufficient weight to the evidence presented, misapplied applicable legal precedent and abused his discretion. *Form I-290B*, dated May 26, 2005.

In support of these assertions, counsel submits a brief, affidavits and evidence of country conditions in Bangladesh. The record also includes, but is not limited to, a doctor's letter for the applicant, proof of insurance, applicant's employer letter, joint tax returns and documentation of the applicant's property ownership. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States without inspection on November 8, 1992. He filed an asylum application on December 28, 1992 and was referred to the immigration court on April 25, 1997. On April 21, 1999, the applicant withdrew his asylum application and was granted voluntary departure, with an alternate order of removal. The applicant remained in the United States and was removed on February 22, 2004. Therefore, the applicant accrued unlawful presence from April 21, 1999, the date he withdrew his asylum claim, until February 22, 2004, the date he departed the United States. In applying for a spouse visa, the applicant is seeking admission within 10 years of his February 22, 2004 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.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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 the acting officer-in-charge erred as a matter of law in concluding that the applicant failed to establish extreme hardship. *See Brief in Support of Appeal*, at 8, dated August 29, 2005. Counsel is correct in citing *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) as providing relevant factors to consider in extreme hardship analysis. These factors are relevant in section 212(a)(9)(B)(v) waiver proceedings and include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes counsel's footnote that *Matter of Cervantes-Gonzalez* dealt with section 212(i) of the Act and other relevant case law on extreme hardship has not dealt with unlawful presence waivers. *Brief in Support of Appeal*, at 9. Counsel urges a broader reading of hardship in the section 212(a)(9)(B)(v) waiver context as unlawful presence is a less serious wrongdoing than fraud. *Id.* 9. Unless the courts distinguish the definition of extreme hardship differently in unlawful presence waiver cases, the AAO will interpret extreme hardship based on prior case law.

Counsel states that the applicant's spouse has three U.S. citizen children, two U.S. citizen parents, three U.S. citizen or lawful permanent resident siblings with family and several U.S. citizen or lawful permanent resident in-laws residing in the United States. *Id.* at 10-13. Counsel states that the applicant's spouse is extremely close to her parents. *Id.* at 12. The applicant's spouse states that family is the most important thing in her life, being away from her parents is extremely difficult (the applicant's spouse is currently outside of

the United States) and her father has heart disease and will probably not live much longer. *Affidavit from Applicant's Spouse*, at 2, dated July 28, 2005. Counsel states that the applicant's spouse has no family ties in Bangladesh or anywhere in the world. *Brief in Support of Appeal*, at 13.

In regard to country conditions, information submitted by counsel indicates that Bangladesh is one of the world's poorest and most densely populated countries with an average per capita income of \$421 and very high illiteracy rates, especially for women. *U.S. Department of State Background Note for Bangladesh*, at 1-8, dated August 2005. There is widespread poverty, child labor, child malnourishment, trafficking, political scandal and human rights abuses. See *U.S. Department of State Country Reports for Bangladesh*, at 1, 12-17, dated February 2005.

In regard to the financial impact of departure, counsel asserts that the applicant was making \$31,366 per year and the average income in Bangladesh is \$421 per capita. *Brief in Support of Appeal*, at 18. However, there is no evidence that the applicant cannot find employment in Bangladesh or that he could not obtain a position that pays more than the average. The record includes a notice of value for property owned by the applicant and his brother valued at \$547,000. *Notice of Value*, dated January 15, 2004. Counsel asserts that the applicant's spouse has no employable skills, opportunities are virtually non-existent and she is currently living using the applicant's dwindling savings. *Id.* The most recent bank statement in the record lists the applicant's bank balance as \$53,009. *Washington Mutual Bank Letter*, dated January 29, 2004. There is no evidence that the applicant's spouse would be unable to receive assistance from her family or her husband's family.

In regard to significant conditions of health, the record includes a doctor's letter for the applicant stating that he has kidney disease and his treatment is incomplete. *Letter from Applicant's Physician*, dated March 5, 2004. Counsel states that the acting officer-in-charge glibly dismissed this letter, however, the AAO agrees with the acting officer-in-charge's statement that the medical reports are inconclusive and do not reflect an extremely serious medical condition. The doctor's letter does not specify the nature of the kidney disease or the severity of it. Furthermore, the record indicates that the applicant had been working while receiving treatment. Therefore, he should be able to work in order to support his family. The AAO notes that the applicant's health problems are only relevant in regard to how it affects his spouse. Counsel asserts that the applicant's employment benefits package covers his spouse and children and the value of these benefits cannot be overstated. *Brief in Support of Appeal*, at 21. There is no evidence that the applicant's spouse cannot obtain an independent healthcare plan if she remains in the United States.

Counsel states that the acting officer-in-charge failed to consider the unavailability of suitable medical care in the Bangladesh and cites sources stating that the healthcare situation is abysmal and health care infrastructure is virtually non-existent. *Brief in Support of Appeal*, at 19. The AAO notes that it considers this information, as it is a factor listed in *Matter of Cervantes-Gonzalez*.

Counsel states that, although the applicant was married after being put into proceedings, the marriage should not be considered an after-acquired equity as the applicant had a pending asylum case and was lawfully present in the United States. *Id.* at 23. The AAO disagrees with this contention, as there was a possibility of removal when the applicant was placed in proceedings.

Counsel asserts that *Matter of Cervantes-Gonzalez* is distinguishable from the applicant's case. As opposed to the respondent and qualifying relative in *Matter of Cervantes-Gonzalez*, the applicant's spouse has no ties to Bangladesh, she would suffer hardship is returned to Bangladesh, the applicant has financial ties to the United States, country conditions are worse and the applicant's spouse did not understand the applicant's immigration issues. *Id.* at 25. The AAO agrees with counsel that there are differences between the two cases although this does not negate a finding of extreme hardship in both cases.

Lastly, counsel contends that the acting officer-in-charge was flawed in implying that the applicant's spouse could easily readjust to life in Bangladesh. *Supra.* at 26. Counsel states that the applicant's spouse was still a child while living in Bangladesh, was cared for her by her parents and now has three children of her own to care for. *Id.* Therefore, she has never lived without the support of her family, and would be forced to raise her children without the support of her family or financial support of her husband. *Id.* The AAO notes that the applicant's spouse has lived the majority of her life in Bangladesh and would have her husband as a support system in lieu of her parents.

After a thorough review of the record, the AAO finds that extreme hardship is not established in the event that the applicant's spouse relocates to the Bangladesh or in the event that she remains in the United States. The AAO notes that as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

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.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, 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 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.