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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW DEHLI Date: JAN 10 2007

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT: Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge, New Dehli, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant appears to be represented. However the applicant did not sign the Form G-28, Notice of Entry of Appearance as Attorney or Representative contained in the record. All representations will be considered but the decision will be furnished only to the applicant.

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. § 212(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 the spouse of a naturalized U.S. citizen and the father of a U.S. citizen son. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and son.

The acting officer in charge 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 Acting Officer in Charge*, dated March 31, 2005.

The record reflects that, in 1991, the applicant entered the United States without inspection. On April 5, 1991, immigration officers apprehended the applicant and placed him into immigration proceedings. On July 21, 1992, the immigration judge ordered the applicant removed. The applicant failed to surrender for removal or depart from the United States. On November 22, 1992, the applicant married his spouse, [REDACTED] (Ms. [REDACTED]). On July 21, 1993, Ms. [REDACTED] filed a Petition for Alien Relative (Form I-130), on behalf of the applicant, which was approved on October 18, 1993. In June 1998 immigration officers apprehended the applicant after police officers arrested him for a domestic violence charge, which was later dropped. On July 15, 1998, the removal order was reinstated and the applicant was removed from the United States and returned to Bangladesh.

On December 23, 1999, 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 family members.

On appeal, counsel contends that the applicant's wife and child are suffering extreme hardships in the United States without the applicant and would suffer extreme hardship if they were to join the applicant in Bangladesh. *See Applicant's Brief* dated May 24, 2005. In support of these assertions, counsel submitted the above-referenced brief, affidavits from the applicant, his spouse and child, copies of financial documentation and copies of the applicant's child's school records. The entire record was reviewed and considered in rendering a decision in this case.

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.

The acting officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to being unlawful present in the United States for more than one year. Counsel does not contest the acting officer in charge's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) 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 or parent 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 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 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).

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 Ms. [REDACTED] is a native and citizen of Bangladesh who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 2000. The applicant and his spouse have a 13-year old son who is a U.S. citizen by birth. The applicant is in his 40's, Ms. [REDACTED] is in her 30's and there is no evidence that Ms. [REDACTED] has any health concerns.

Counsel contends that the applicant's son will suffer extreme hardship if he were to remain in the United States without the applicant or travel to Bangladesh in order to join the applicant. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing section 212(a)(9)(B)(v) extreme hardship. Therefore, hardship to the applicant's son will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

Counsel asserts that the applicant's spouse is experiencing extreme hardship because she and her son are emotionally suffering due to the separation from the applicant, her son is struggling in school because Ms. [REDACTED] is unable to spend sufficient time with him and his father is absent from the home, and Ms. [REDACTED] is struggling to support and provide for her family which is reflected by the low balance in her checking account and high balance on her credit card statement. Ms. [REDACTED] in her affidavits, states that she cannot find a good job in the United States, is working in a factory for 5 to 7 days of the week and cannot take care of everything. She states she needs the applicant with her and her son misses his father, is not doing well at school, and becomes depressed when he sees his friends playing with their fathers. She states that she can barely pay her bills and send money to the applicant because he cannot find a job in Bangladesh. She states that her quality of life has dramatically decreased and she misses the applicant's love, affection and assistance and is becoming emotionally and mentally drained.

While the bank account balance is low and the credit card bill debt is high, there is no evidence in the record to indicate that Ms. [REDACTED] is unable to support herself and her family. Financial records indicate that Ms. [REDACTED] earns approximately \$485 per week, or approximately \$25,199 per year. The record shows that Ms. [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. Moreover, counsel asserts in his brief that Ms. [REDACTED] is currently employed and is making enough to get by." While it is unfortunate that Ms. [REDACTED] has essentially become a single parent and professional childcare may involve an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that Ms. [REDACTED] has alternative care for her son provided by her mother during the periods in which she is absent from the home due to work commitments. There is no evidence in the record to indicate that Ms. [REDACTED] is unable to perform daily activities or work duties due to any illness. The record does not support a finding of financial loss that would result in an extreme hardship to Ms. [REDACTED] even when combined with the emotional hardship described below.

There is no evidence in the record to indicate that Ms. [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation or that would be exacerbated by the applicant's absence. While it is unfortunate that Ms. [REDACTED] may be affected emotionally by the separation from the applicant and her son's separation from the applicant, this is hardship that is commonly suffered by aliens and families upon deportation. Moreover, according to the record, Ms. [REDACTED] has family members in the United States who may be able to support her financially, physically and emotionally in the absence of the applicant.

Counsel asserts that Ms. [REDACTED] will suffer extreme hardship if she and her son were to accompany the applicant to Bangladesh because her son speaks very little Bengali, education opportunities her son has in the United States would not be available to him in Bangladesh, she would lose the home which the family owns in the United States, and she would have no means of income in Bangladesh. Ms. [REDACTED] in her affidavits, states that she cannot go to Bangladesh because she needs her job, she cannot find a job in Bangladesh, and all of her immediate family members reside in the United States. There is no evidence in the record to confirm that the applicant and Ms. [REDACTED] would be unable to find any employment in Bangladesh. There is no evidence in the record that Ms. [REDACTED] or her son suffer from a physical or mental illness for which they would be unable to obtain treatment in Bangladesh. While one of the official languages of Bangladesh is Bengali, English is the other official language of Bangladesh and is spoken in urban areas and among the educated. *Department of State, Background Note: Bangladesh*, www.state.gov/r/pa/ei/bgn/3452.htm. While the hardships Ms. [REDACTED] faces are unfortunate with regard to adjusting to a lower standard of living, separation from friends and family, and her son missing an opportunity to be educated in the United States, these hardships are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, as U.S. citizens, the applicant's spouse and son are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Ms. [REDACTED] 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 Ms. [REDACTED] will face no greater hardship than 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, which meets the standard in section 212(a)(9)(B)(v) of the Act, 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*, 96 F.3d 390 (9th Cir. 1996); *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 failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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 will be dismissed.

ORDER: The appeal is dismissed.