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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



HR

FILE:



Office: PHOENIX, AZ

Date:

AUG 23 2005

IN RE:



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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse who petitioned for him in this case.

The district 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 6, 2004.

On appeal, counsel asserts that the district director abused his discretion in denying the waiver application, the applicant's spouse will suffer extreme hardship and a balancing of the equities should result in a favorable exercise of discretion. *See Form I-290B*, dated June 2, 2004.

In support of these assertions, counsel submits a statement from the applicant. The record also includes previously submitted documents including a letter from the applicant's spouse, a letter from the attorney, proof of child support payments and the 2003 U.S. Department of State Country Reports for Bangladesh. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States using a passport and student visa with a false identity. As a result of this prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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.

Counsel asserts that the district director abused his discretion in denying the waiver application and that the applicant's spouse will suffer extreme hardship if the applicant's case is denied. *Form I-290B*.

The precedent case used to determine extreme hardship, as cited by counsel, is *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). Therefore, an analysis under the factors mentioned in *Matter of Cervantes-Gonzalez* is appropriate for this decision.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 lawful permanent resident or United States citizen family ties to 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.

The record indicates that the applicant's spouse has two U.S. citizen children and there is no mention of family ties in Bangladesh. The record includes the 2003 U.S. Department of State Country Reports for Bangladesh which details police corruption and violence and discrimination against women. There is no mention of the applicant's spouse having any ties to Bangladesh and the record indicates that she does not speak, read or write the local language. *Attorney's Letter*, at 1, dated April 25, 2004. The applicant states that there are cultural, environmental, political and dietary reasons that his spouse cannot relocate to Bangladesh, but fails to expound on these reasons and provide substantiating evidence. *Applicant's Statement*, at 2, dated June 13, 2004. The applicant states that his spouse is a full-time housewife and that they have many bills to pay including house, car and credit card payments. *Id.*, at 1. There is no documentation of these expenses or that the applicant's spouse cannot obtain employment. In fact, the record includes evidence that the applicant's spouse has worked in the past. There is no evidence that the applicant cannot obtain employment in Bangladesh.

The record does not mention significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record does not evidence extreme hardship in the event that the applicant's spouse relocates to Bangladesh or in the event that she remains in the United States without the applicant. 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. The applicant states that he cannot live without his family and they cannot live without him. *Id.* The record indicates that the applicant's spouse will face the common problems associated with separation from a spouse if she remains in the United States.

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.

Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant and is sympathetic to her situation. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that 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. Counsel asserts that a balancing of the equities should result in a favorable exercise of discretion. *Form I-290B*. The AAO notes that a balancing of favorable and unfavorable factors in order to exercise discretion is only done upon a statutory finding of extreme hardship. 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(i) 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.