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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: JAN 16 2009

IN RE: Applicant: [redacted]

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

[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.

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).

Michael Grissom

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Bangladesh who was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact on her nonimmigrant visa application, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is the spouse of a naturalized United States citizen and that she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and 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 her husband and daughter.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated May 31, 2006.

On appeal, the applicant claims that "[f]or a minor and unintentional mistake three souls are suffering from severe family separation and insecurity of life." *Form I-290B*, filed June 30, 2006.

The record includes, but is not limited to, counsel's brief, statements from the applicant and her husband, and a letter from [redacted], LCSW, regarding the applicant's husband's psychological condition. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> Aliens Unlawfully Present.-
>
> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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 [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.

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

(i) In general.-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.

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

(1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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 indicates that the applicant is a native and citizen of Bangladesh who initially entered the United States on July 2, 2002, on a B-2 nonimmigrant visa with authorization to remain in the United States until January 1, 2003. On July 22, 2002, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On July 13, 2004, the applicant's Form I-

130 was approved. In January 2005, the applicant departed the United States. On December 1, 2005, the applicant filed a Form I-601. On May 31, 2006, the OIC denied the applicant's Form I-601, finding the applicant willfully misrepresented material facts on her nonimmigrant visa application, she accrued more than 365 days of unlawful presence, and she failed to establish extreme hardship would be imposed on her spouse.

The Department of State Foreign Affairs Manual (FAM) states that, "in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of the visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: Apply for adjustment of status to permanent resident..." *DOS Foreign Affairs Manual, 9 FAM Visas* § 40.63 N4.7(a)(1). The applicant contends that she "never intended to defraud the US government...When [she] left Bangladesh, [she] had no intention of getting married in the US." *Affidavit from the applicant*, dated November 16, 2005. The AAO notes that the applicant attended a conference in Baltimore, Maryland, from July 5, 2002 to July 7, 2002, and eight (8) days after the conference ended, she married her husband. The principal of Eden Girls' College, in Dhaka, Bangladesh, claims that the applicant "was registered and enrolled in the next education course (Master of Arts)" for after her return from the conference. *Letter from Principal, Eden Girls' College, Dhaka*, dated March 20, 2005. Imam [redacted] states that the applicant "participated in the convention...and played an active role throughout the convention." *Letter from Imam* [redacted], *Ex. Vice President, ICNA*, dated March 30, 2005.

The Department of State developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ... Marrying and takes [sic] up permanent residence." *DOS Foreign Affairs Manual, 9 FAM Visas* § 40.63 N4.7-1(3).

The rules states in pertinent part:

> "If an alien initiates such violation of status occurs more than 30 days but less than 60 days after entry into the United States, no presumption of misrepresentation arises. However, if the facts in the case give the consular officer reasonable belief that the alien misrepresented his or her intent, then the consular officer must give the alien opportunity to present countervailing evidence." Id. at § 40.63 N4.7-3. "When violative conduct occurs more than 60 days after entry into the United States, the Department does not consider such conduct to constitute a basis for an INA 212(a)(6)(C)(i) ineligibility." Id. at § 40.63 N4.7-4.

Though not specifically addressed in the FAM, if the violation occurs within the first 30 days, there is a presumption of misrepresentation. Although the AAO is not bound by the Foreign Affairs

Manual, it finds its analysis in these situations to be persuasive. Therefore, the AAO finds that the applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act.

Additionally, the AAO notes that the applicant accrued unlawful presence from January 1, 2003, the date the applicant's authorization to remain in the United States expired, until January 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her January 2005 departure from the United States. The AAO finds that the applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

A waiver under sections 212(a)(9)(B)(v) and 212(i) 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 herself experiences upon removal is irrelevant to sections 212(a)(9)(B)(v) and 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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 AAO notes that the record contains references to the hardship that the applicant's daughter would suffer if the applicant were denied admission into the United States. Sections 212(a)(9)(B)(II) and 212(a)(6)(C)(iii) of the Act provides that a waiver, under sections 212(a)(9)(B)(v) and 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's husband.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

The applicant, through counsel, claims that her husband has suffered extreme hardship since she departed the United States. *See Appeal Brief, supra.* [redacted] diagnosed the applicant's husband with adjustment disorder with depressive features. *See letter from* [redacted] *LCSW,* undated. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and a social worker. There was no evidence submitted establishing an ongoing relationship between Ms.

[redacted] and the applicant's husband. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the social worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant's husband states he cannot join the applicant in Bangladesh because he is "the only earning person of [his] family, work[ing] as a customer sales and reservation associate...and [he] is assured of a steady income with all benefits." *Letter from* [redacted], dated September 29, 2005. The AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Bangladesh. Additionally, the AAO notes that the applicant's husband is a native of Bangladesh, who spent his formative years in Bangladesh, he speaks the native language, and there is no evidence in the record that the applicant's husband has no family ties in Bangladesh. The AAO notes that the applicant resides with her father in Bangladesh, and she has other family in Bangladesh. The applicant's husband states his daughter "suffers from asthma and allergies and [he is] concerned about her health in an environment that is so polluted." *Id.* The AAO notes that there is no medical documentation in the record establishing that applicant's daughter suffers from any medical conditions. Additionally, as noted above, the applicant's daughter is not a qualifying relative under sections 212(a)(9)(B)(v) and 212(i) of the Act. The AAO finds that the applicant has failed to establish extreme hardship to her United States citizen husband if he joins the applicant in Bangladesh.

In addition, the applicant does not establish extreme hardship to her husband if he remains in the United States, maintaining his employment and in close proximity to his family. The applicant's husband states "[s]hould [he] give up [his] steady employment in the US, go to Bangladesh to [his] family, [he] will throw [his] life in the mercy of total uncertainty and will fall into a serious hardship, which will make [their] life [sic] miserable." *Letter from* [redacted] *supra*. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Further, beyond generalized assertions regarding country conditions in Bangladesh, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he remains in the United States.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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 United States citizen husband has endured hardship as a result of separation from the applicant. However, his situation is typical of individuals separated as a result of removal 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 husband 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(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.