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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: FEB 18 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation and under 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 ten years of his last departure from the United States. The applicant is married to a naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their United States citizen children.

The Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Field Office Director,* dated July 20, 2007.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of fact and law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver under 212(i) of the Act. Counsel also contends that the applicant did not commit fraud. *Form I-290B; Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to a psychological evaluation of the applicant's spouse; statements from family members and friends; published country conditions reports; statements from the applicant's spouse; a statement from the applicant; medical records for the applicant; tax statements for the applicant and his spouse; W-2 Forms for the applicant and his spouse; an employment letter for the applicant; earnings statements for the applicant; a housing lease and rent statement; bank statements for the applicant and his spouse; and an electric bill. The entire record was reviewed and considered in rendering a decision on the appeal.

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:

> 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.

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.

In the present case, the record indicates that the applicant entered the United States without inspection in 1992 and remained until March 2006. *Consular Notes, Embassy of the United States of America, Dhaka, Bangladesh,* dated December 13, 2006. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status based on the Form I-140 approval on behalf of his alleged father on August 6, 1998. *Form I-485.* In an affidavit before USCIS, the applicant's alleged father admitted that the applicant was not his child and that the birth certificate presented on the applicant's behalf was fraudulent. *USCIS Affidavit*, dated February 1, 2005. The applicant filed a second Form I-485 application on April 16, 2004, based on the Form I-130 filed by his spouse. *Form I-485.* Counsel asserts that the applicant and his alleged father had and have a father-son relationship, and that the applicant openly informed USCIS that he was not the biological son of his alleged father. *Attorney's brief.* While the AAO acknowledges counsel's assertions, it notes that the record does not include any sworn statement

or other documentation correcting the applicant's misrepresentation on his Form I-485 filed on August 6, 1998. As such, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C) of the Act. Furthermore, as he entered the United States without inspection, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until April 16, 2004, the date of the proper filing of his Form I-485. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General (now Secretary) as a period of stay for the purposes of determining the bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations*, dated June 12, 2002. As the applicant is seeking admission within ten years of his 2006 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Waivers of inadmissibility resulting from violations of sections 212(a)(6)(C) and section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his children would experience if his waiver application is denied is not directly relevant to the determination as to whether he is eligible for a waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act. The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If 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 (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 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 AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Bangladesh or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Bangladesh, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Bangladesh and her parents continue to live there. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* Although the record does not specify how long the applicant's spouse has resided in the United States, the AAO notes that the applicant's spouse naturalized on April 17,

1992. *Naturalization certificate.* Counsel notes that if the applicant's family relocated to Bangladesh, the applicant's children would not be able to cope with the change. *Attorney's brief.* Counsel specifically notes that the applicant's younger son suffers from acute asthma and living in Bangladesh would worsen his condition. *Id.* He contends that the applicant's village, Borshijura, lacks educational facilities and basic hygiene, and that there is every possibility that the applicant's children might be kidnapped for ransom. *Id.* He also asserts that in Borshijura, no food would be digestible by the children whose immune systems have been formulated under U.S. conditions. *Id.*

While the AAO acknowledges counsel's assertions, it notes that the record fails to include medical records documenting the asthmatic condition of the applicant's son and attesting to the fact that this condition would worsen in Bangladesh. Further, the record lacks sufficient documentary evidence to establish that the applicant's children would be subject to the hardships he describes. The AAO also observes that while counsel refers to the village of Borshijura, the applicant stated that his city of residence was Sylhet, Bangladesh. *Form G-325A, Biographic Information sheet, for the applicant*, dated June 22, 1998. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the applicant's children are not qualifying relatives for the purpose of this case and the record fails to document how any hardship the applicant's children encountered would affect the applicant's spouse, the only qualifying relative. While the applicant's spouse states that her children are always sick after being in Bangladesh (*Statement from the applicant's spouse*, dated June 6, 2006), she does not identify the nature of their illnesses or state how they affect her. Additionally, the record does not address what, if any, employment opportunities would be available to the applicant's spouse in Bangladesh, nor does the record document how the applicant's family would be affected financially if they resided in Bangladesh. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Bangladesh.

If the applicant's spouse resides in the United States, the applicant needs to establish that she will suffer extreme hardship. The applicant's spouse has numerous family members living in the Bronx, New York, the same city where the applicant's spouse resides. *Statements from family members of the applicant's spouse*, dated August 27, 2007. According to a licensed psychologist who met with the applicant's spouse on August 11, 2007, the applicant's spouse has Major Depressive Disorder as a result of being separated from the applicant. *Statement from* [redacted], dated August 13, 2007. The psychologist further states that in the event that the applicant's spouse continues to be separated from the applicant, her depressive symptomatology will be clinically exacerbated. *Id.* Because her depression is rooted in the reality experience of being separated from her husband, neither antidepressant medication nor supportive psychotherapy can fully alleviate her symptomatology. *Id.* 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 with the applicant's spouse. Therefore, the conclusions reached in the

submitted evaluation, being based on a single interview, do not reflect the insight commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The record also fails to reflect that the applicant's spouse has been seen by any other mental health professional or that she has ever sought treatment or been treated in relation to any mental health issues.

The applicant's spouse is unemployed. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* In 2003, she earned $873.00. *Form W-2.* The applicant's spouse states that she has lost her apartment and is living with her brother's family, sharing a bedroom with her children and two of her brother's children. *Statement from the applicant's spouse*, dated June 6, 2006; ***see also Statement from*** [redacted], dated August 13, 2007. According to the applicant, there is no one to support his family and the longer he stays in Bangladesh, the more he will go back in life. *Statement from the applicant*, dated June 6, 2006. While the AAO acknowledges these statements, it does not find the record to establish that the applicant's spouse will suffer extreme financial hardship if the applicant's waiver application is denied. The record fails to submit sufficient documentary evidence to establish that the applicant is unable to obtain employment outside the United States, employment that would allow him to assist his family financially. The AAO also notes that, in addition to the brother with whom she is now living, the applicant's spouse has a number of family members in the United States, some of whom live in close proximity to her. It finds no evidence in the record that demonstrates that these family members are unable or unwilling to provide with her financial assistance or other types of support in the applicant's absence. *Statements from family members of the applicant's spouse*, dated August 25-27 and undated

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, *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, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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)(6)(C) and 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.