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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW DELHI Date: JUL 17 2009

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 PETITIONER:

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Bangladesh who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 return to the United States and reside with his spouse.

The field office director concluded that the applicant was inadmissible under section 212(a)(6)(B) of the Act, for which no waiver is available, and therefore denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) without determining whether the applicant had established extreme hardship to a qualifying relative or whether a favorable exercise of discretion was warranted. *Decision of the Field Office Director*, dated August 13, 2007.

The five-year bar to admission under section 212(a)(6)(B) of the Act ended on April 21, 2008, five years after the applicant departed the United States. He requests that his section 212(a)(9)(B)(v) waiver application be granted after that date based on extreme hardship to his United States citizen wife, due to her medical condition. In support of the appeal the applicant submitted a letter from his wife and from a psychiatrist who has been treating her since October 2004. 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:

> (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 Secretary, 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. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (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. These factors included 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. *Id.* at 566. The BIA has further stated:

> 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).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (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).

U.S. court decisions have additionally 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra,* the court further held 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 U.S. Supreme Court additionally 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.

In the present case, the record reflects that the applicant is a fifty-one year-old native and citizen of Bangladesh who initially entered the United States without inspection on or about July 12, 1992. He submitted an application for asylum and his case was referred to the immigration judge on May 23, 1997. The applicant was served with a Notice to Appear charging him with inadmissibility under section 212(a)(6)(A)(i) of the Act on May 27, 1997. He failed to appear at a hearing before the immigration judge and was ordered removed in absentia on May 25, 1999. The applicant remained in the United States until April 22, 2003, when he traveled to Bangladesh. The applicant is therefore inadmissible to the United States 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.

The applicant asserts that his wife is suffering extreme hardship as a result of separation from the applicant because she suffers from a psychiatric disorder and has no close relatives in the United States. *See letter from the Applicant* dated March 18, 2007. In support of this assertion the applicant submitted a letter from his wife stating that she is lonely and experiencing difficult conditions due to her psychiatric illness. *See letter from* [redacted] dated October 31, 2008. The applicant also submitted a letter from a psychiatrist who is treating the applicant's wife for a "serious mental illness," Delusional Disorder, persecutory type. *See letter from* [redacted] *Faith Regional Health Services – Psychiatric Services,* dated February 20, 2007. The letter states that the applicant's wife has been treated since October 2004 for this illness and has symptoms including difficulty sleeping, delusional and paranoid thoughts, anxiety, and other mood symptoms, and further states:

> She is taking medications including Abilify, Klonopin, Geodon, Cogentin and Trazadone. With all of these medications on board, she still decompensates from time to time, needing acute interventions. Her psychiatric treatment is long term as this is a chronic life long condition, and there is essentially no cure. These medications are not readily available outside the United States; therefore if she were to have to leave the United States her psychiatric care would be compromised. I do also feel that being apart from her husband causes her extreme hardship and stress, which intensifies her psychiatric symptoms. The presence of her husband in the United States along with her will provide the family support that is so vital for the stability of her mental illness.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letter from the mental health professional who is treating the applicant's wife indicates that she is suffering from a serious mental illness that is a chronic condition with no cure, and further states that the medications she needs are not readily available outside the United States. The letter additionally states that her condition is exacerbated by separation from her husband and her symptoms are intensified due to the resulting stress. When considered in the aggregate, the factors of hardship to the applicant's wife should she remain in the United States or relocate to Bangladesh constitute extreme hardship. In light of her psychiatric condition, it appears that

separation from the applicant is causing the applicant's wife great emotional distress that is jeopardizing her mental health. The unavailability of suitable psychiatric care, when combined with financial and other hardships such as loss of employment in the United States and readjusting to life in Bangladesh after living in the United States for over nine years, would amount to hardship to the applicant's wife that is unusual or beyond that which would normally be expected upon removal or exclusion if she relocated to Bangladesh with the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(a)(9)(B)(v) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's immigration violations, including entry without inspection, failure to appear at his removal hearing, and remaining in the United States without authorization from May 25, 1999 until April 2003.

The favorable factors in the present case are the extreme hardship to the applicant's wife, and the applicant's lack of a criminal record.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.