U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: DEC 0 8 2012 Office: BANGKOK, THAILAND (DHAKA, BANGLADESH) [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Bangkok, Thailand. 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. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of his last departure, and for using a photo-substituted passport to enter the United States in 1993. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 25, 2011.

On appeal, counsel for the applicant asserts that the applicant's spouse will experience physical and emotional impacts rising to the level of extreme hardship due to the applicant's inadmissibility. *Form I-290B*, received on October 4, 2011.

The record includes, but is not limited to, counsel's brief; a statement from [redacted] MD. regarding the applicant's spouse; copies of medical records pertaining to the applicant's spouse; a statement from [redacted] PhD., regarding the applicant's spouse; a statement from the applicant's spouse's spouse; pictures of the applicant, her husband and their daughter; a letter from the applicant's employer, tax records and pay stubs for the applicant's spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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-
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> . . . .
>
> (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. . . .

The record indicates that the applicant entered the United States in 1993, and remained until he was removed at the U.S. government's expense in August 2006. The applicant filed an application for asylum in the United States, but he withdrew it and was granted voluntary departure on November 9,

1998. The applicant did not depart within the voluntary departure period. He failed to surrender for removal on July 23, 2001, and he was subsequently apprehended and removed on August 31, 2006. As such, the applicant was unlawfully present in the United States for over one year. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within 10 years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on appeal.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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) Misrepresentation, states in pertinent part:

> (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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 entered the United States in 1993 using a photo-substituted passport. He was subsequently entered into removal proceedings and ordered to depart under § 240 of the Act, triggering a five year bar to re-entry pursuant to section 212(a)(9)(A) of the Act. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having entered the United States using a photo-substituted passport. He does not contest inadmissibility under section 212(a)(6)(C)(i) of the Act on appeal.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's spouse stated in an affidavit dated November 5, 2009, that she has been diagnosed with high blood pressure, diabetes and acute asthma, and that she needs the applicant's physical and emotional support. *Statement of the Applicant's Spouse*, dated November 5, 2009.

The record includes a number of medical documents pertaining to the applicant's spouse, including medical visitation logs and medical records documenting doctor's visits. There is also a statement from Dr. [redacted] dated September 22, 2011. In his letter, Dr. [redacted] states that the applicant's spouse suffers from severe Asthma and Hypertension requiring daily medication, and that the medication can have psychosomatic results such as suicidal tendencies or thoughts. Dr. [redacted] lists the medications the applicant's spouse takes for her asthma condition and states that returning to Bangladesh would exacerbate her condition and she would not be able to find adequate treatment.

The AAO takes note of the community ties and continuity of medical care that would be disrupted if the applicant's spouse were to relocate to Bangladesh. Although the medical documents submitted indicate she has visited a doctor on numerous occasions, they do not corroborate counsel's assertions regarding the nature and severity of her medical conditions. Nonetheless, based on this evidence the AAO recognizes that the applicant's spouse would have to disrupt her continuity of medical care to relocate abroad, and will consider the uncommon physical impacts on the applicant's spouse due to her medical conditions if she were to relocate to Bangladesh.

With regard to the country conditions in Bangladesh, an examination of the record does not reveal any evidence which demonstrates the applicant's spouse would be unable to receive any medical treatment for her conditions there. Without evidence which indicates she would be unable to receive medical treatment, the AAO cannot conclude that she would lack any needed treatment there. In addition, the AAO does not find the record to support that the conditions in Bangladesh are such that they would result in an uncommon hardship to relocate there. The AAO notes that, as discussed by

the Field Office Director, the applicant's spouse is a native of Bangladesh and resided there until she was 35 years of age. The AAO finds that this would serve to mitigate some aspects of the impacts of the applicant's spouse's relocation to Bangladesh.

When the hardship impacts upon relocation are considered in the aggregate, the AAO does not find them to rise above the common hardship factors to a degree of extreme hardship.

With regard to hardship upon separation, counsel for the applicant asserts that the applicant's spouse is chronically ill with acute asthma and diabetes, citing to the medical records submitted into the record. *Statement in Support of Appeal*, dated November 5, 2009. The AAO notes that the statement from Dr. [redacted] does not indicate the applicant's spouse has been diagnosed with diabetes, nor does it indicate that the applicant's spouse is suffering medical hardships to the degree that it impacts her ability to function on a daily basis. The medical records submitted indicate the applicant's spouse has visited a doctor numerous times for such things as muscle and joint pains, but they do not indicate that she is experiencing any serious, ongoing medical condition which would impact her ability to perform common tasks. Thus, while the record indicates that the applicant's spouse suffers from asthma and high blood pressure, it does not contain documentation which is sufficiently probative to establish the degree and severity of her medical conditions are such that they rise to the level of extreme hardship. The AAO notes that the applicant's spouse has not resided in the United States since 2006, and that since that time, the applicant's spouse has resided without the applicant. Nonetheless, based on the fact that the evidence corroborates the applicant's spouse suffers from some medical conditions, it will consider the physical hardship she would experience upon separation when aggregating the impacts on the applicant's spouse.

Counsel has also asserted that the applicant's spouse will experience emotional hardship due to separation from the applicant. The record contains a psychological examination of the applicant by Dr. [redacted] In his examination, Dr [redacted] recounts the applicant's spouse's symptoms as relayed to him by her, and concludes that she suffers from Adjustment Disorder with Mixed Anxiety and Depressed Mood. Although this examination indicates the applicant's spouse visited a mental health practitioner for an evaluation, it fails to establish what the prognosis for her condition is, how her condition may or may not be controllable with medications, whether she should continue treatment or whether she should seek additional therapy to cope with her conditions. The AAO does not find this examination sufficiently probative to demonstrate that the applicant's spouse will experience uncommon emotional hardship.

The applicant has not articulated any other basis of hardship. Thus, when the hardship factors relating to separation are considered in the aggregate, the AAO does not find them to rise above the common hardships to a degree of extreme hardship.

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 faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse would prefer to have the applicant here to assist her physical, and that she may experience some emotional impact due to separation. These

assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) 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.

It is noted that, on Form I-290B, counsel indicates that the applicant is appealing the decisions of the Field Office Director regarding his Form I-601 application for a waiver and Form I-212 application for permission to reapply for admission after removal. The applicant's Forms I-601 and I-212 constitute separate matters and were denied in separate decisions from the Field Office Director. Only a single decision may be appealed with a single Form I-290B. As the applicant only filed one Form I-290B, the AAO has treated the filing as a request for review of the Field Office Director's decision on the Form I-601 application, and we will not also review the denial of the applicant's Form I-212 application.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility rests 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.