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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

Date: APR 05 2013 Office: NEW DELHI, INDIA FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B); Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

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.

Thank you,

for

Ron Rosenberg
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 record reflects that the applicant is a native and citizen of Bangladesh who entered the United States on or about January 25, 1993 without authorization. The applicant applied for asylum in the United States on June 21, 1993. On April 24, 1997, the applicant's asylum case was referred to an immigration judge. On August 7, 2002, the immigration judge ordered the applicant to be removed from the United States *in absentia*, as the applicant failed to appear at the hearing. The applicant was removed from the United States on December 2, 2004. As the applicant was ordered removed from the United States on August 7, 2002 and did not depart the United States until December 2, 2004, the applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B) for having been unlawfully present in the United States for a period of more than one year. The applicant was further found to be inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), as an alien previously ordered removed. The applicant is the spouse of 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 reside in the United States with her U.S. citizen spouse. The applicant further seeks permission to reapply for admission after removal pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with her spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated April 18, 2012. In the same decision, the field office director denied the applicant's Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal.

The record contains the following documentation: briefs filed by the applicant's attorney in support of Form I-290B, Notice of Appeal or Motion, Form I-601 and Form I-212; statements from the applicant's spouse and the applicant's son; medical documentation for the applicant's spouse, son, and daughter; financial documentation; and information on country conditions in Bangladesh. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> Aliens Unlawfully Present.-
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> > (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.
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> . . . .
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> (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…

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 U.S. citizen husband is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

Counsel asserts that the applicant's spouse is suffering from emotional hardship due to being separated from his two U.S. citizen children. The record indicates that the applicant's two children relocated to Bangladesh in 2004 at the time the applicant was removed from the United States. According to counsel, the applicant's spouse works ten to twelve hours per day to support his family and cannot care for his children at the same time, so the family decided that the children should go to Bangladesh to be cared for by the applicant.

The record shows that in August 2007, the applicant's son contracted Guillain-Barré Syndrome (GBS), a disorder in which the body's immune systems attacks part of the peripheral nervous system, and for which there is no known cure. Counsel states that the applicant's son woke one morning and found that his legs were completely and suddenly paralyzed. The record includes documentation from August 2007 showing that the applicant's son received treatment for this condition at the , and with a neurologist at both institutions in Dhaka, Bangladesh. A letter from the applicant's son's school states

that the applicant's son was forced to take a leave of absence for three months starting in August 2007 due to a sudden illness. A letter from a doctor in the United States states that the applicant's son suffered from Acute Guillain-Barré Syndrome in August 2007, and was treated when he visited the United States in 2008. The letter states that the applicant's son was seen by the doctor in June 2008, and exhibited weakness in his legs and arms for which he was referred to a Pediatric Neurologist and also seen at The letter indicates that the applicant's son needs to continue follow up with a neurologist and a therapist. The record further includes a letter from a doctor in Bangladesh dated April 2, 2009, indicating that the doctor is continuing to treat the applicant's for Acute Guillain-Barré Syndrome. A letter from a medical officer at the in Dhaka, Bangladesh, dated April 18, 2010 states that even though the applicant's son eventually recovered from Acute Guillain-Barré Syndrome after expensive treatment, he needs to be engaged in regular outdoor activities, and the city of Dhaka does not have a child friendly environment that facilitates outdoor activities.

The record further shows that the applicant's daughter suffers from bronchial asthma. The April 18, 2010 letter from the medical officer at the states that Dhaka is one of the most polluted cities in the world, and that it is highly likely that the applicant's daughter's asthmatic symptoms could be minimized if the family migrates to a healthier city. A separate medical document, dated June 13, 2010, states that the applicant's daughter is suffering from respiratory problems, particularly bronchial asthma, and that environmental pollution seems to be the triggering factor.

Counsel states that the applicant's spouse is concerned for the health of his children. Counsel states that the applicant's spouse lives with the everyday uncertainty of his children, which causes stress to him. The concern that the applicant's spouse has for his son who was diagnosed with Acute Guillain-Barré Syndrome is further evidenced by the fact that the applicant's spouse brought his son to the United States in 2008 to be examined by medical professionals in the United States.

Counsel also contends that the applicant's spouse is suffering from financial hardship being separated from the applicant. The record indicates that the applicant's spouse is employed as a taxi driver in New York City. A copy of the 2009 federal income tax return for the applicant's spouse shows an adjusted gross income of $26,205.00. Counsel states that the applicant's spouse was unable to work full time while providing support to his children, so the family had no choice other than to send the children to Bangladesh to live with the applicant. According to counsel, the applicant is unable to find employment in Bangladesh, and a good portion of the earnings of the applicant's spouse are sent to Bangladesh to support his family. The record includes copies of documents related to the remittances that the applicant's spouse sends to the applicant in Bangladesh.

Counsel states that the applicant's children are studying in private schools in Dhaka, Bangladesh, where classes are taught in English. The record includes receipts from the schools where the applicant's children are studying. The record notes that the applicant has family members living in Mymensingh, Bangladesh, which is a city far from Dhaka. According to a letter from a social work professor at in Bangladesh, the applicant is living in Dhaka for her children's

education, as there is no English-medium school in Mymensingh. According to counsel, in addition to the fees for private schooling, the applicant's spouse pays a driver to take the children to and from school as he fears for their safety. The applicant also pays for the medical expenses for his children. Counsel states that due to the amount of money the applicant's spouse sends to Bangladesh to support his family there, the applicant's spouse lives in a rented room, as he cannot afford to pay rent for his own apartment.

The record further indicates that the applicant's spouse is suffering medical hardship. The applicant's spouse has been diagnosed with brittle diabetes, a condition that is associated with psychological problems, including depression and stress that can impact the regular activities of daily living. Medical documentation in the record further indicates that the medical conditions of the applicant's spouse include neuropathy, migraines, hypothyroidism, memory loss with abnormal MRI brain, gastric reflux, and hyperlipidemia.

The record establishes that if the waiver application were denied, the applicant's spouse would experience emotional hardship resulting from his concern over the medical conditions of his two children, as well as financial and medical hardship. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if he remained in the United States without the applicant.

The record further indicates that the applicant's spouse would experience hardship were he to relocate to Bangladesh to be with the applicant. Although the applicant's spouse was born in Bangladesh, and is familiar with the language and culture of Bangladesh, the applicant's spouse has lived in the United States since 1994, and is now a U.S. citizen. Counsel notes that the applicant's spouse has medical insurance in the United States which helps him to care for his medical conditions, and if the applicant's spouse left the United States, he would lose that insurance. In addition, the applicant's son is suffering from a serious medical condition. The State Department advises that the general standards of sanitation and health care in Bangladesh are far below U.S. and European standards.[1]

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[1] According to the U.S. Department of State:

> The general standards of sanitation and health care in Bangladesh are far below U.S. and European standards. There is limited ambulance service in Bangladesh and attendants seldom are trained to provide the level of care seen in the United States. Traffic congestion and lack of modern centralized emergency services system (on par with 911in the United States) makes patient transport slow and inefficient. Several hospitals in Dhaka (e.g., Hospitals) have emergency rooms that are equipped at the level of a community hospital, but most expatriates leave the country for all but the simplest medical procedures. .... There have been reports of counterfeit medications within the country, but medication from major pharmacies and hospitals is generally reliable. Medical evacuations to Bangkok or Singapore are often necessary for serious conditions or surgical procedures and can cost thousands of dollars.

U.S. Department of State, Bangladesh - Country Specific Information, Medical Facilities and Health Information.

The applicant has established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Bangladesh to reside with the applicant.

The AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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 favorable factors in this matter are the extreme hardships the U.S. citizen spouse is facing due to the fact that the applicant and his two children are separated from him, and living in Bangladesh; the applicant's residing in the United States for more than 10 years; and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's unlawful entry and unlawful presence in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. The Form I-212 was denied solely based on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility under section 212(a)(9)(B) of the Act, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On August 7, 2002 the applicant was ordered removed from the United States. As such, she is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

ORDER: The appeal is sustained. The applications are approved.