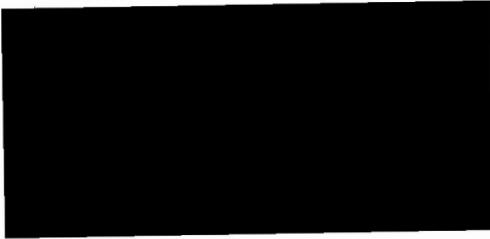




U.S. Citizenship  
and Immigration  
Services

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**invasion of personal privacy**

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FILE: [REDACTED]

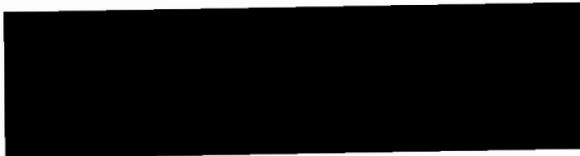
Office: NEW DELHI, INDIA

Date: **MAY 23 2008**

IN RE: [REDACTED]

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



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, New Delhi, India. The matter 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 pursuant to 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 a period of one year or more and pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a visa to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the father of a U.S. citizen. 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 his spouse and child.

The officer-in-charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and the application was denied accordingly. *Officer-in-Charge's Decision*, dated June 9, 2006.

On appeal, counsel asserts that the officer-in-charge ignored or irrationally minimized the relevant hardship factors, including the applicant's spouse's multi-year medical history of extreme depression and panic attacks. *Form I-290B*, received July 3, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statements, the applicant's spouse's mother's statements, letters from the applicant's spouse's physicians, the applicant's spouse's medical records, country conditions information on Bangladesh, and an approved Form I-130, Petition for Alien Relative, benefiting the applicant.

The record reflects that the applicant entered the United States without inspection on or about August 16, 1997, applied for asylum on March 31, 1998 and was placed in removal proceedings on September 1, 1998.<sup>1</sup> The applicant did not appear for his January 6, 1999 removal hearing. The immigration judge found the applicant to have abandoned all applications for relief from removal and ordered him removed *in absentia*. He departed the United States in December 2000. Therefore, the applicant accrued unlawful presence from on or about August 16, 1997, the date he entered the United States, until December 2000, when he departed the United States.<sup>2</sup> In support of his diversity visa lottery application, the applicant submitted a fraudulent employment letter reflecting an employment history in Bangladesh. It was submitted in order to reflect that the applicant was not in the United States unlawfully. As a result of the applicant's unlawful presence and his prior misrepresentation, the applicant is inadmissible to the United States.

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

(B) Aliens Unlawfully Present.-

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<sup>1</sup> The applicant states that he entered the United States in 1993 as a B-2 visitor and overstayed, therefore, his exact date of entry is not clear from the record.

<sup>2</sup> The applicant's asylum application did not toll, i.e. suspend, his accrual of unlawful presence as he was employed without authorization when his application was pending.

(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.

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:

(1) 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.

Therefore, the applicant requires waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act. *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 are relevant in section 212(a)(9)(B)(v) waivers as well since the same standard of extreme hardship is applied. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established in the event that the qualifying relative relocates to Bangladesh or in the event that the qualifying relative remains in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. The record indicates that the applicant's spouse is the qualifying relative and she is currently residing in Bangladesh.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides to Bangladesh. Counsel states that the applicant's spouse is suffering extreme emotional and psychological hardship related to a multi-year fight with extreme clinical depression, her mental condition is life-threatening and her family has a history of depression. *Brief in Support of Appeal*, at 6, undated. The applicant's spouse's prior medical records reflect a history of major depression and panic disorder. *Medical Records*, at 1, dated March 12, 2003. The applicant's spouse's mother details her history of depression and her daughter's history of depression and suicidal thoughts. *Applicant's Spouse's Mother's Statement*, at 1, dated June 28, 2006. The applicant's spouse's mother states that her daughter was not able to receive adequate support from her psychiatrist in Bangladesh. *Id.* at 1. The applicant's spouse states that after returning to Bangladesh in February 2006, her depression has gotten worse and she frequently thinks about suicide. *Applicant's Spouse's Statement*, at 1, dated June 26, 2006.

The applicant's spouse's physician states that the applicant's spouse's family has a strong history of depression and he has followed them at his clinic for many years. *Letter from [REDACTED]*, dated June 28, 2006. In the statement prepared by the applicant's spouse in support of the Form I-601, she states that she cannot live a healthy emotional life except in the United States, but that her attempt to live apart from the applicant resulted in depression and panic attacks. *Applicant's Spouse's I-601 Statement*, at 1, dated March 26, 2005. The applicant's spouse's psychiatrist in Bangladesh states that he has treated the applicant's spouse for two years, the denial of the applicant's waiver request has resulted in a worsening of her depression, and she has turned suicidal. *Letter from [REDACTED]*, at 1-2, dated July 18, 2006. He states that the use of medicine and counseling to improve the applicant's spouse's mental health is proving ineffective in the face of her loss of hope in returning to the United States with her family. *Id.* at 2. The applicant's spouse's mother also details the significant and numerous cultural and financial difficulties that her daughter has encountered while residing in Bangladesh. *Applicant's Spouse's Mother's First Statement*, at 2-5, dated May 3, 2005. Based on the record, the AAO finds that extreme hardship has been established for the applicant's spouse in the event that she resides in Bangladesh.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse resides in the United States. The applicant's spouse's mother states that when her daughter returned from Bangladesh to assist with the immigration process, she fell into severe depression. *Applicant's Spouse's Mother's Statement*, at 1. The applicant's spouse's physician states that if the applicant's spouse returned to the United States without the applicant, she would be at a very high risk of developing significant depression and she would experience extreme hardship and mental duress. *Letter from [REDACTED]* As

discussed previously, the applicant's spouse has a history of depression and suicidal thoughts. Based on the record, the AAO finds that extreme hardship has been established for the applicant's spouse in the event that she resides in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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(h)(1)(B) 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, "[B]alance 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 include the applicant's unlawful presence, misrepresentation, unauthorized employment, removal order and failure to timely depart the United States.

The favorable factors for the applicant include his U.S. citizen spouse and child, lack of a criminal record, extreme hardship to his spouse, an approved Form I-130, statements of remorse by the applicant, and statements attesting to his good character.

The AAO finds that the violations committed by the applicant are serious in nature and 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.