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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW DELHI

Date:

JUL 28 2009

IN RE:

APPLICATION:

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

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.

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, and 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 under 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 a nonimmigrant visa for entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen father and U.S. lawful permanent resident mother.

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 Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's father is suffering from coronary heart disease, is very ill, and proper treatment is not available in Bangladesh. Counsel contends that the applicant's parents do not have any financial resources available to reside in Bangladesh with the applicant. Counsel states that the applicant's parents have family ties to the United States. Counsel indicates that it is considered unsafe for unmarried women to stay in Bangladesh alone. Counsel states that separation from the applicant is causing extreme mental and emotional anxiety, suffering and pain. Counsel notes that the applicant's mother cannot visit the applicant in Bangladesh because she cannot obtain another reentry permit, the applicant's father is ill, she has knee damage, and it is very expensive. As corroborating evidence counsel furnished attestations from the applicant, the applicant's parents, and medical documentation. 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:

- (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.

The record reflects that the applicant misrepresented her date of birth on her nonimmigrant visa application to reflect that she was under 21 years old and thus eligible for the V nonimmigrant visa. The applicant showed on the nonimmigrant visa application, dated October 22, 2003, her date of birth as November 16, 1986 while her actual date of birth is November 16, 1982. The applicant also furnished a passport, school records, and a birth certificate misrepresenting her date of birth as November 16, 1986. The record contains a memorandum from the U.S. Embassy, Dhaka, dated August 7, 2006, which states that the applicant testified that she knew she would not be given a visa if she submitted the correct information. The record contains several letters from the applicant acknowledging that her actual date of birth is November 16, 1982. Therefore, the AAO finds the applicant to be inadmissible to the United States under 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 a nonimmigrant visa for entry into the United States by fraud or willful misrepresentation.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's parents. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (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 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.

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel furnished a joint affidavit from the applicant's parents, dated April 6, 2007. The applicant's father states that he is suffering from coronary heart disease. He states that he had an acute myocardial infarction in April 2006, is restricted from physical activities, and is in need of ongoing assistance and care. He indicates that the applicant's assistance will contribute substantially to his physical, mental and emotional recovery. He states that he cannot receive proper medical treatment in Bangladesh. He notes that it will be extremely difficult financially for him to receive medical treatment in Bangladesh because he has sold his valuable properties in Bangladesh, and does not have any available resources in the country. He states that he is residing with his 33 year old married daughter who has two small grandchildren, goes to school and work, and has no time to take care of him. He states that his wife's knee is damaged and she is restricted in her abilities to assist him. The affidavit, which is partially written as a third person narrative, also states that the applicant's mother cannot travel to Bangladesh because she has to take care of her husband and has severe knee pain. The affidavit notes that the applicant's father is medically restricted from travel to Bangladesh. These assertions are also reflected in the joint affidavit from the applicant's parents, dated November 7, 2006, initially filed with the waiver application.

As corroborating evidence, counsel furnished the following medical documentation:

- A letter from [REDACTED], dated April 11, 2008, which states that the applicant's father has coronary artery disease. He states that the applicant's father's condition has not improved and he continues to be at risk of having progressive symptoms. He indicates that the applicant's father requires some help from his family because of his limitations with ambulation.
- A letter from [REDACTED], dated April 3, 2007, which states that the applicant's mother has anxiety symptoms and chronic osteoarthritis involving both knees. He states that the applicant's mother has difficulty getting upstairs and is stiff in the morning. He states that this makes her feel very anxious and she has some difficulty sleeping. He notes that the applicant's mother feels it is hard for her to do day to day activities and is very tired. He states that she takes medication for hyperlipidemia.
- A letter from [REDACTED], dated April 3, 2007, which states that the applicant's father has coronary artery disease and osteoarthritis involving his hands and feet. He states that the applicant's father has had angioplasty and stent placements in his coronary. He notes that the applicant's father states that he has stiffness in the hands and gets short of breath on exertion. He states that the applicant's father feels tired and has Hyperlipidemia and hypertension for which he is taking medications.
- A letter from [REDACTED], dated November 3, 2006, which reiterates the information provided in his prior letters, and also states that the applicant's father has a history of hypertension and hyperlipidemia, and is on medications. He states that the applicant's father's activities are limited and he may benefit from the company of a family member for his continuous care to help him with daily tasks. He states that due to recent Myocardial infarction history, it may not be advisable for the applicant's father to travel longer distances on flights for over 5-7 hours.

Yale New Haven Hospital Discharge Instructions, dated August 3, 2006 and May 19, 2006. The instructions dated May 19, 2006 reflect that on April 30, 2006 the applicant was admitted to treat his coronary artery disease/unstable angina, heart attack. The instructions dated August 3, 2006 reflect that on August 2, 2006, the applicant was admitted to treat his coronary artery disease/unstable angina. The applicant was instructed to avoid heavy lifting, pushing, or pulling anything over 10 pounds, rest in between activities, and to avoid exercising in extreme temperatures or on windy days.

The AAO finds the foregoing documentation to be evidence of the applicant's parent's medical conditions and the resulting limitations on their activities of daily life. The applicant indicates in her written statements, dated April 7, 2007 and November 12, 2006, that she is in a position to assist her parents with their physical activities. She indicates that there are no other family members who are available to provide regular and constant attention. However, the record does not demonstrate how the applicant's presence in the United States would improve her parent's quality of life. There is no indication of the type of assistance they specifically require from the applicant and how they are currently managing without the applicant's presence in the United States. Furthermore, the applicant's father's assertion that he would be unable to receive or afford commensurate health care in Bangladesh is not supported by the record. Counsel has not furnished country condition reports or other reliable documentation that would serve to describe the status of health care in Bangladesh. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Although the applicant's parents' unsupported assertions are relevant and have been considered, they can be afforded little weight in these proceedings.

The applicant's father indicates in his affidavit that he is constantly physically ill, mentally depressed, and living in constant pain, anxiety and fear with worry about his daughter. He states that his daughter is 24 years old and in Bangladesh it is considered very unsafe and improper for a "young grown up girl" to stay alone. He notes that people make bad comments, harass, and stalk young females living alone. The applicant indicates in her April 8, 2007 written statement that in Bangladesh it is very unsafe and unacceptable for a young unmarried grownup girl to stay alone. She notes that her parents worry all the time about her well being and it is causing them constant mental anxiety, pain, suffering, emotional depression, high blood pressure, and constant physical deterioration. As corroborating evidence, the applicant furnished a letter from [REDACTED], dated November 11, 2006. [REDACTED] states in his letter that the applicant is suffering from generalized anxiety disorder with tension headache and depression. He states that the applicant is living alone at her home while her parents and other family members are abroad. He indicates that the applicant had been treated for one year with antidepressants.

The AAO notes that the applicant's assertion that she is residing alone is not supported by the record. The consular officer's interview notes reflect that during the applicant's waiver interview on August 3, 2006, she testified that she was residing with her brother and planned to apply in September for admission to a university. Further, there is no indication in the record of how the applicant is managing financially, socially, or otherwise without her parents. Nor does the record

reflect whether the applicant has been targeted, harassed or placed in any danger. Moreover, the record does not contain sufficient documentation to support the assertions that the applicant's parents are suffering from anxiety and depression. The April 3, 2007 letter from [REDACTED] states that the applicant's mother was prescribed medications for anxiety disorder. However, he does not clarify whether this disorder is related to her medical conditions or her separation from the applicant. There is no documentation in the record showing that either of the applicant's parents has been evaluated by a licensed mental health professional to establish the severity and implications of their anxiety and depression and its connection to their separation from the applicant. As stated previously, while unsupported assertions are relevant and have been considered, they can be afforded little weight in these proceedings.

The AAO recognizes that the applicant's parents will suffer emotionally as a result of separation from the applicant. Their situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

Finally, in regard to whether the applicant's parents could relocate to Bangladesh, counsel asserts that the applicant's parents do not have any financial resources available to reside in Bangladesh with the applicant. Counsel indicates that the applicant's parents have sold almost all of their valuable properties in Bangladesh to immigrate to the United States. The applicant's parent's affidavit dated April 6, 2007 states that the applicant's father cannot find employment in Bangladesh because he is 68 years old and is in a vulnerable physical condition. The affidavit further states that the applicant's mother is 58 years old and has never been employed. While financial hardship is a factor in an extreme hardship determination, it must be supported by the record. The AAO finds the assertions of financial hardship in the present case to be without any significant detail. There is no description of the assets the applicant's parents currently maintain in Bangladesh. Nor is there any discussion of whether they could reside with their son or any other family members in Bangladesh. The AAO acknowledges that [REDACTED] letter, dated November 3, 2006, states that due to the applicant's father's recent Myocardial infraction history, it may not be advisable for him to travel longer distances on flights over 5-7 hours. However, this letter was issued only three months after he received a balloon angioplasty/stent for his coronary artery disease. The recent letter from the applicant's cardiologist, [REDACTED] dated April 11, 2008, does not discuss any

recommendations regarding whether the applicant's father can travel long distances by air. The AAO notes again that unsupported assertions can be afforded little weight in these proceedings.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's parents face extreme hardship if the applicant is refused admission to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.