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U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: NEW DELHI, INDIA

Date:

MAR 03 2009

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)

ON BEHALF OF APPLICANT:

[Redacted]

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 Acting Officer in Charge, New Delhi, India and the Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely filed. A motion to reopen is now before the AAO. The motion will be denied as it does not comply with regulatory filing requirements. Nevertheless, the AAO, on its own motion, will reopen the matter. The AAO withdraws its previous decision. 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and 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 spouse.

On June 9, 2006, the AAO rejected the applicant's appeal as having been untimely filed. To rebut the AAO's finding, counsel submits a motion to reopen. However, as counsel first sent the motion directly to the AAO and provided an incorrect fee, it was not received by U.S. Citizenship and Immigration Services (USCIS) within the 33-day period required by regulation. See 8 C.F.R. § 103.5(a)(1)(i). While the AAO may, in its discretion, excuse the untimely filing of a motion, it also notes that counsel has failed to submit the applicant's motion on the Form I-290B, Notice of Appeal or Motion, the requirement at 8 C.F.R. § 103.5(a)(1)(iii). Therefore, as the applicant's motion does not comply with this regulatory filing requirement, it must be denied. Nevertheless, having taken note of the documentation provided by counsel to establish the timely filing of the applicant's appeal, the AAO reopens the proceeding on its own motion.

The Acting Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated October 7, 2004.

On appeal, counsel contended that USCIS erred in finding the applicant inadmissible, as the applicant's misrepresentation was not willful. In the alternative, counsel asserts that USCIS erred as a matter of law in finding that the applicant failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of the waiver, the record includes, but is not limited to, counsel's brief; statements from the applicant; employment letters for the applicant's spouse; a student loan statement for the applicant's spouse; a medical statement for the applicant's spouse; psychological evaluations for the applicant and her spouse; an education certificate for the applicant; remittance statements for the applicant; and a statement from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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 applied for a V-3 visa on September 19, 2001 as the unmarried child of a lawful permanent resident when she had married her naturalized United States citizen spouse on September 14, 2001. *Consular Memorandum, Embassy of the United States, Dhaka, Bangladesh*, dated March 16, 2003; *Decision of the Acting Officer in Charge, Embassy of the United States, New Delhi, India; Marriage certificate*. While the applicant admits that she married on September 14, 2001, she states that she was initially interviewed by a United States Consular Officer on September 6, 2001 and at the time she was unmarried. *Statement from the applicant*, dated October 23, 2004. She states that she had a second interview with a United States Consular Officer on October 25, 2001 and did not get the chance to discuss the fact that she had married. *Id.* Counsel, therefore, asserts that although the applicant misrepresented her marital status, it was not a willful misrepresentation that would make her inadmissible under section 212(a)(6)(C) of the Act. The AAO notes that the record indicates that, despite several opportunities to recant her story, the applicant continued to affirm that she was single when the United States consular post was already in possession of a copy of her marriage documents. *Consular Memorandum, Embassy of the United States, Dhaka, Bangladesh, dated March 16, 2003*. As a result, the AAO finds that the applicant committed a willful misrepresentation of a material fact in seeking to procure a visa to the United States and is inadmissible under section 212(a)(6)(C) of the Act.

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. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Bangladesh or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in the adjudication of this case.

If the applicant's spouse relocates with the applicant to Bangladesh, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Bangladesh. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. Although his parents were born in Bangladesh, they now live in the United States. *Id.* The applicant's spouse has been living in the United States since 1995. *Attorney's brief*. The record does not address what family members the applicant's spouse may have in Bangladesh. The applicant's spouse owes a debt of \$26,934.84 in student loans. *Account statement*, [REDACTED], dated September 6, 2004. Counsel asserts that if the applicant's spouse were to relocate to Bangladesh, it would be impossible for him to pay back his student loan. *Attorney's brief*. The AAO notes that the record does not include published country conditions reports or other documentary evidence showing that the economic situation in Bangladesh would preclude the applicant's spouse from obtaining employment that would allow him to meet his financial responsibilities. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the AAO observes that the record includes a letter from [REDACTED], stating that the applicant's spouse is an active partner in this company. *Statement from* [REDACTED] dated October 19, 2004. The statement notes that [REDACTED] is an online retail store and that the applicant's spouse has been actively involved in keeping the business operational, overlooking product catalogue management, inventory management, customer support, as well as the financial side. *Id.* The AAO observes that the letterhead used for this statement says [REDACTED] and the address listed is the home address of the applicant's spouse. *Id.* The AAO notes that there is nothing in the record to show that the applicant's spouse would be unable to continue working for [REDACTED] from Bangladesh given the online nature of the company and the fact that the applicant spouse's employment history is in web design and web analysis. See *Form G-325A, Biographic Information sheet, for the applicant's spouse*.

Counsel also asserts that the applicant's spouse has a medical condition for which no proper treatment is available in Bangladesh. *Attorney's brief*. The record includes a statement from [REDACTED] stating that the applicant's spouse has been suffering from a nerve pain to his right elbow. *Statement from [REDACTED]* dated October 25, 2004. [REDACTED] states that the applicant's spouse may suffer in the long run if this condition is not treated at this moment and notes that if he returns to Bangladesh, he may not have proper treatment. *Id.* While the AAO acknowledges the medical condition of the applicant's spouse and the possible lack of proper care in Bangladesh, it notes that [REDACTED] does not provide a specific diagnosis with regard to the nerve pain in the right elbow of the applicant's spouse. Further, the record makes no mention of how the applicant's spouse's life is affected by this nerve pain, what treatment he requires, the length of the required treatment or what future damage, if any, he would suffer were he not able to obtain adequate medical care. While health conditions are certainly factors to take into account when conducting an extreme hardship analysis, *Matter of Cervantes-Gonzalez* specifies that these health conditions are to be "significant." 22 I&N Dec. 560, 565-566 (BIA 1999). In the present matter, the record fails to demonstrate that the medical condition affecting the applicant's spouse's elbow is significant.

Based on its review of the record, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Bangladesh.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the parents of the applicant's spouse live in the United States and the applicant's spouse has resided in the United States since 1995. *Form G-325A, Biographic Information sheet, for the applicant's spouse; Attorney's brief*. The parents of the applicant's spouse note that he is under enormous emotional stress, which is affecting his life socially and professionally. *Statement from the parents of the applicant's spouse*, dated October 26, 2004. According to the psychologist who evaluated the applicant's spouse on October 16, 2004, the applicant's spouse suffers from Major Depressive Disorder as a result of being separated from the applicant. *Statement from [REDACTED]*, dated October 18, 2004.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on one interview and that the psychologist drew his conclusions based solely on this interview. As a result, the AAO does not find the conclusions reached in the submitted evaluation to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering them speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO observes that [REDACTED] also asserts that the applicant's spouse has lost a job as a result of his depression. *Id.* There is nothing in the record to document this assertion, nor does the applicant's spouse address a loss of employment in his statements. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. See *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)).

The AAO notes that the applicant has been suffering from Reactive Depressive Disorder since December 2002 for which she receives regular treatment and follow-up care, which includes

psychotropic medication. *Statement from* [REDACTED], dated June 14, 2003. While the AAO acknowledges the applicant's medical condition as documented by a licensed healthcare provider, it notes that hardship the applicant would experience if her waiver request is denied is not directly relevant to the determination as to whether she is eligible for a waiver under section 212(i). In that the record does not address or document how the applicant's spouse, the only qualifying relative in this case, is affected by the applicant's depression, the applicant's mental health does not provide a basis for a finding of extreme hardship.

U.S. court decisions have repeatedly 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS*, *supra*, held further 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to remain in 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(a)(6)(C) 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.