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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship and Immigration Services

712

FILE:

Office: NEW YORK

Date:

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IN RE:

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

ON BEHALF OF PETITIONER:

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 District Director, New York, New York, 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)(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 one year or more, and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for having procured admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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) and 1182(i), in order to remain in the United States with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *Decision of the District Director* dated June 18, 2007.

On appeal counsel for the applicant asserts that the applicant is eligible for a waiver based on extreme hardship to his lawful permanent resident wife. *See Counsel's Brief in Support of Appeal*. Counsel states that the applicant's wife and stepdaughter both depend on the applicant for financial support despite the fact that he earns a low income and he would be better able to provide for the family if he is granted permanent residence. *See Notice of Appeal to the AAO (Form I-290B)*. In support of the waiver application counsel submitted an affidavit from the applicant's wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 –
  - (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 Secretary, 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:

(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:

- (1) The [Secretary] may, in the discretion of the [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 [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 AAO notes that the record contains references to the hardship that the applicant's U.S. Citizen stepdaughter would suffer if the waiver application is denied. A waiver is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. The applicant's spouse is the only qualifying relative, and hardship to the applicant's stepdaughter will therefore not be separately considered, except as it may affect the applicant's spouse.

A waiver of the bar to admission under sections 212(i) and 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. In *Hassan v. INS, supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a fifty year-old native and citizen of Bangladesh who first entered the United States on May 10, 1999 with a fraudulent passport and visa. He filed an application for adjustment of status on July 16, 2001 and departed the United States after that date and reentered with an Advance Parole Document on January 26, 2002. The applicant accrued unlawful presence from May 10, 1999 until July 16, 2001, when he applied for adjustment of status. The applicant is therefore inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring admission through fraud or misrepresentation of a material fact and under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. The record further reflects that the applicant’s wife is a forty-two year-old native and citizen of Bangladesh and Lawful Permanent Resident of the United States.

Counsel states that the applicant’s wife and stepdaughter would suffer emotional hardship if the applicant were denied admission, and the applicant’s wife states that she would “suffer a great personal loss by his absence from the United States.” *Affidavit of [REDACTED]* dated May 9, 2007. No further evidence was submitted concerning her mental health or the potential effects of separation from the applicant. The evidence on the record is insufficient to establish that separation from the applicant would cause his wife to experience emotional harm that is more serious than the type of hardship a family member would normally suffer when faced with her spouse’s deportation or exclusion. Although the distress caused by the prospect of being separated from her spouse is neither questioned nor minimized, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

The applicant’s wife states that in addition to emotional hardship, she would suffer financial hardship as a result of the applicant’s removal from the United States. She states that she is not employed and depends on her husband’s earnings to survive. *See Affidavit of [REDACTED]*. As noted in the decision of the district director, the applicant’s reported income in 2006 was \$11,913, and the applicant and his wife had to rely on a joint sponsor for their affidavit of support. Further, no evidence was submitted concerning the family’s expenses and the applicant’s wife made no claim that she would be unable to work if the applicant were to leave the United States. 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)). There is no indication that

there are any unusual circumstances that would prevent the applicant's wife from supporting herself or cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The record is insufficient to establish that any emotional and financial difficulties that the applicant's wife would experience are other than the type of hardships that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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). The applicant made no claim that his wife would experience hardship if she were to relocate with him to Bangladesh. Therefore, the AAO cannot make a determination of whether the applicant's wife would suffer extreme hardship if she moved to Bangladesh.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his Lawful Permanent Resident spouse as required under sections 212(i) and 212(a)(9)(B)(v) of the Act.

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