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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

DATE: AUG 0 2 2013 OFFICE: NEW DELHI, INDIA File:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, New Delhi, India, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. On May 6, 2013, the applicant filed a motion to reopen and reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion is granted, the prior AAO decision is withdrawn and the underlying appeal is sustained.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)(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 visa to the United States through willful misrepresentation. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative, and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO dismissed the applicant's appeal and affirmed the Field Office Director's decision.

On motion, counsel contends: the AAO's dismissal of the applicant's appeal of the denial of his waiver application is "erroneous as a matter of law and fact" as the AAO "improperly assessed and weighed the evidence" provided in support of the waiver application; the AAO "failed to make rational[] and logical inferences from the evidence contained in the administrative record"; and the administrative record "clearly shows the hardship [the applicant's mother] is experiencing goes beyond what is normally experienced by a qualifying relative of an inadmissible individual."

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support his claim and asserted reasons for reconsideration, the motion to reopen and reconsider will be granted.

The record includes, but is not limited to: briefs, a motion, and correspondence from current and previous counsel; letters of support; identity, psychological, medical, and financial documents; and documents on conditions in Bangladesh. 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:

> (i) In general.- 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.
>
> ...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects the applicant's lawful permanent resident mother submitted a Petition for Alien Relative (Form I-130), indicating an incorrect date of birth so that the applicant could qualify for immigration benefits as her beneficiary-child. The record also reflects the applicant did not correct the date of birth during his immigrant visa interview and used another date of birth. Accordingly, the Field Office Director found the applicant inadmissible for utilizing different dates of birth and presenting false documents in an attempt to obtain a visa as the child of a lawful permanent resident. On motion, the applicant does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now the Secretary of Homeland Security (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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant, his siblings, sister-in-law, and nieces can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parent is the only demonstrated qualifying relative in this case. 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).

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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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.*, *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. I.N.S.*, 138 F.3d 1292, 1293 (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.

On motion, counsel contends: separation from the applicant and his brother "is exacerbating [the applicant's mother's] medical condition as her mental health has deteriorated significantly and is rooted in her inability to see [the applicant and his brother]"; "while [the applicant's mother's treating mental health professional] does not discuss ongoing treatment, she nonetheless makes it clear that [the applicant's] presence would be advantageous to his mother's mental conditions and physical health"; the applicant's mother "relies upon others to care for her needs ... the burden of caring for her falls on the shoulders of only one of her children[,] who at the same time has his own wife and children to also care for"; the applicant's older brother is a street vendor and "often works

long hours in harsh weather conditions just to make sufficient funds to support his family"; the applicant's older brother's "income significantly dropped after 2009 ... [a]t the same time, his financial support obligations have remained the same"; "though the proof of remittance is from 2006, [the applicant's older brother] has continued to support [the applicant and his brother] remaining in Bangladesh"; and the applicant's older brother's family "lives well below the Department of Homeland Security Poverty Guidelines ... [the applicant's] presence in the United States could greatly relieve this burden by providing another source of income ... or he could remain at the family home and care for his mother and nieces while his brother's wife seeks employment." In support of these contentions, the motion includes a letter from the applicant's mother's treating physician, stating, "She persistently experiencing [sic] physical and emotional symptoms, which dramatically restrict her ability to function independently, and make her dependent on others." *Medical Letter, Issued by Dr.* *M.D., Ph.D.*, dated April 24, 2013. The motion also includes an additional medical letter, stating, the applicant's mother's medical conditions "are currently in stable condition, however [she] needs psychiatric follow-up for current non-urgent mental status." *Medical Letter, Issued by Dr.* *M.D.*, dated April 23, 2013. And, the motion includes a copy of the applicant's older brother's 2012 income tax returns and a Medicaid online renewal form.

Previously, the AAO determined the record is sufficient to establish the applicant's mother is currently being treated for various medical conditions controlled by prescriptive medications and that she has been diagnosed with Major Depressive Disorder. Additionally, the AAO determined the record is sufficient to establish the applicant's eldest brother is their mother's primary breadwinner, and he last submitted remittances to the applicant's household on June 7, 2006. On motion, the AAO finds the record is further sufficient to establish the applicant's absence from his mother is a contributing factor to her current mental health condition, and the applicant's presence would be essential to the physical, emotional, and financial wellbeing of his mother and her household. Accordingly, the AAO finds, in the aggregate, the applicant's parent would suffer extreme hardship upon separation from the applicant.

In its previous decision, the AAO found the applicant's parent would experience extreme hardship if she were to relocate to Bangladesh due to her length of residence and strong ties to the United States, she maintains her lawful permanent residence status, her ongoing medical treatment, the current social conditions in Bangladesh, along with the normal hardships associated with relocation. The AAO notes the applicant's parent's circumstances have not improved since the AAO's previous decision. Accordingly, the record continues to reflect the cumulative effect of the hardship the applicant's parent would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the

exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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) ...

Id. at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case include extreme hardship to the applicant's lawful permanent resident mother, familial ties, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of his identity upon the attempt to obtain an immigrant visa.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion is granted. The prior decision of the AAO is withdrawn, and the underlying appeal is sustained.