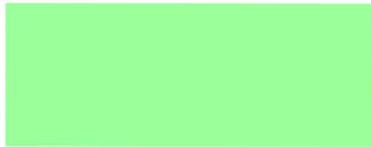




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: JUL 30 2014

Office: PITTSBURGH

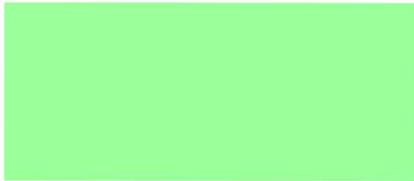
FILE: 

IN RE:

Applicant: 

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

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Pittsburgh, Pennsylvania, and the matter 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 attempting to procure admission to the United States and attempting to procure an immigration benefit through fraud or misrepresentation. The applicant was also found inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver under sections 212(i) and 212 (h) of the Act, 8 U.S.C. §§ 1182(i) and 1182(h), in order to remain in the United States with his U.S. citizen spouse and his U.S. citizen daughter and step-son.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and further found that there was sufficient derogatory information in the record that would prevent the exercise of favorable discretion in granting the waiver. The Field Office Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.<sup>1</sup> *See Decision of the Field Office Director*, dated February 19, 2014.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) erred in finding that the applicant had not established that his qualifying relatives would suffer extreme hardship if the waiver application was not approved, and submits additional evidence of hardship to his spouse and children. Counsel further contends that USCIS abused its discretion in stating that even if the applicant established the required extreme hardship to his qualifying relatives, he would still not be granted a waiver as a matter of discretion.

The record includes, but is not limited to: briefs by applicant's counsel in support of the Form I-290B, Notice of Appeal or Motion and Forms I-601; statements from the applicant's spouse; medical documentation for the applicant's spouse and step-son; financial documentation; documentation related to the applicant's application for asylum in the United States; country-conditions information about Bangladesh; and the applicant's criminal records. 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) 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.

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<sup>1</sup> The record indicates that the applicant previously filed a Form I-601 on December 6, 2010. The Field Office Director, Pittsburgh, Pennsylvania, denied the initial Form I-601, finding that the applicant failed to establish that his removal would cause extreme hardship to a qualifying relative. *See Decision of the Field Office Director*, January 20, 2011. There is no indication in the record that the applicant appealed the denial of his first Form I-601.

The record indicates that the applicant attempted to enter the United States on March 23, 2001 using a passport with a different name and date of birth and a fraudulent visa. The applicant was removed from the United States at that time and reentered the United States on September 20, 2001 with a passport and visa under the name and date of birth that the applicant is currently using.

In addition, the applicant stated on his second Form I-601 that he made misrepresentations on his CSS/LULAC application. The record indicates that the applicant filed Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act on April 28, 2005, under Legal Immigration Family Equity (LIFE) Act.<sup>2</sup> While section 245A of the Act provides that the information provided by an applicant pursuant to a LIFE Act application is confidential, the information may be used if it is obtained from an independent source.

Section 245A of the Act, 8 U.S.C. § 1255a, states in pertinent part:

(c)(5) Confidentiality of information.-

(A) In general.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

- (i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;
- (ii) make any publication whereby the information furnished by any particular applicant can be identified; or
- (iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or

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<sup>2</sup> On June 1, 2001, the Department of Justice published an interim rule in the Federal Register that implemented section 1104 of the LIFE Act and the LIFE Act Amendments by establishing procedures for certain class action participants, which included class members in Catholic Social Services, Inc. (CSS), League of United Latin American Citizens (LULAC), or Zambrano legalization cases, to become lawful permanent residents of the United States. The final rule was issued June 4, 2002.

prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Authorized disclosures.-The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(6) Penalties for false statements in applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

In *Uddin v. Mayorkas*, 862 F.Supp.2d 391 (E.D. Pa. 2012), the court found that the use of information connected to the applicant's Special Agricultural Worker legalization application did not violate the applicable confidentiality provision,<sup>3</sup> which is similar to that of Section 245A of the Act, as the information was obtained from an independent source, specifically, stamps in the applicant's passport. The court held that "the confidentiality provision also provides that while the application

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<sup>3</sup> Section 210(b)(6) of the Act, 8 U.S.C. § 1160(b)(6).

process itself cannot be used as a means to deny adjustment of status, information obtained from an independent source may be used as grounds for a denial.” *Uddin*, 862 F.Supp.2d at 404 (citation omitted). *See also Lopez v. Ezell*, 716 F. Supp. 443, 445 (S.D. Cal. 1989) (“On its face, the language of [the Act] does not extend to the information not obtained directly from the application itself.”).

In this particular case, the misrepresentations of the applicant in connection to his LIFE Act application did not come from the application process, but rather from the applicant’s own admission on Form I-601. The Field Office Director thus found the applicant inadmissible under section 212(a)(6)(C) of the Act for misrepresentations on his Form I-687, and for providing false testimony to an Immigration Officer during his interview on July 28, 2005 regarding this application.

Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation and attempting to procure an immigration benefit through fraud or misrepresentation. The applicant does not contest this inadmissibility.

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

The Attorney General [now Secretary of the Department 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant’s U.S. citizen spouse is the only qualifying relative under section 212(i) of the Act. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child’s hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Section 212(a)(2)(A) of the Act states, in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
  - (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
  - (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that the applicant was convicted in the Court [REDACTED] Pennsylvania, on [REDACTED] 2008 under the charge of Corruption of Minors in violation of section 6103(a)(1) of title 18 of the Pennsylvania Consolidated Statutes. The applicant was sentenced to two years probation, and electronic monitoring for a period of six months. He was also ordered to obtain a sex offenders evaluation and follow recommended treatment.

The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. He does not qualify for the exception to this ground of inadmissibility under section 212(a)(2)(A)(ii), because he was 34 years old when he committed the offense and the maximum penalty possible for the crime exceeded one year.

On appeal, counsel contends that, with respect to the applicant's criminal conviction, there were mitigated circumstances concerning the events that led to his conviction. However, counsel concedes that the applicant remains inadmissible because he pled guilty to corruption of minors on the advice of his criminal attorney.

As a person found to be inadmissible under section 212(a)(2)(A) of the Act, the applicant is eligible to apply for a waiver under section 212(h) of the Act.

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

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2)... if—

...

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Although the applicant is inadmissible under both section 212(a)(2)(A)(i)(I) and section 212(a)(6)(C)(i) of the Act, the AAO will not consider the applicant's eligibility for a waiver under section 212(h) of the Act, as the applicant also must satisfy the more restrictive requirements of section 212(i). Establishing extreme hardship under section 212(i) of the Act will also satisfy the requirements for a waiver of inadmissibility under section 212(h) of the Act.

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 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 Board 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 Board 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 Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of 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., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

We concur with the finding of the Field Office Director that the applicant has established that his qualifying relative would experience extreme hardship were she to relocate to Bangladesh to reside with the applicant. The applicant's spouse was born in the United States, she is unfamiliar with the language and culture of Bangladesh, and all her family resides in the United States. In addition, the

record indicates that the applicant's spouse has a child from a previous relationship who suffers from autism. The applicant's spouse submitted a statement that she is pre-diabetic, and would not be able to procure proper medical treatment in Bangladesh for herself and her son. She further stated that the applicant's family in Bangladesh is not able to support the family due to their financial situation. Accordingly, we find that the evidence of hardship to the applicant's spouse, considered in the aggregate, demonstrates that she would suffer extreme hardship were she to relocate to Bangladesh to be with him.

With respect to the hardship that the applicant's spouse would experience if she were to be separated from the applicant, counsel contends that the applicant's spouse is suffering medical hardship as a result of an automobile accident on April 24, 2011. Counsel states that the accident caused the applicant's spouse to fracture her heel and ankle. The record includes medical documentation regarding the injury to the applicant's spouse from the time of the injury. However, the most recent medical document in the record is a doctor's statement dated August 11, 2011, in which the doctor states that the wounds can take up to one year from the date of the initial surgery to heal, and that the doctor is unable to give a specific date as to when the wound would heal and the applicant's spouse can progress back to normal activities. There is no more recent documentation regarding the current status of the injury to the applicant's spouse.

The applicant's spouse states that she is pre-diabetic, however, there is no evidence in the record to support this contention. 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)).

The applicant's spouse submits an affidavit in which she states that she is currently unemployed and is receiving disability payments from social security. The record indicates that she is currently receiving \$1,621 in social security benefits each month, or \$19,542 per year. The evidence submitted is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. We have long

interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Furthermore, even if the applicant demonstrated that his spouse would experience extreme hardship in both scenarios, he has not shown that he merits a favorable exercise of discretion. In addition to the applicant's conviction for corruption of a minor, we note that the applicant attempted to enter the United States on March 23, 2001 using a passport and visa belonging to another individual, was placed in expedited removal proceedings, and was found inadmissible for attempting to procure admission to the United States through fraud or willful misrepresentation. Less than six months after his March 2001 removal from the United States, he obtained a nonimmigrant visa in his current name and entered the United States on September 20, 2001. The record contains no explanation of whether he disclosed his prior removal when applying for the nonimmigrant visa or concerning his use of two separate identities, and we thus concur with the Field Office Director that the applicant's actual identity remains in question.

The AAO therefore further finds that, even if the applicant demonstrated extreme hardship to a qualifying relative, the applicant also does not merit a favorable exercise of discretion as required for a waiver under section 212(i) of the Act.

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 not been met.

**ORDER:** The appeal is dismissed.