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U.S. Citizenship  
and Immigration  
Services

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#13

FILE:

Office: NEW DELHI, INDIA

Date:

DEC 10 2008

IN RE:

APPLICATION:

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

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge (OIC), New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application will be denied.

The applicant is a native and citizen of Bangladesh who was found to be inadmissible to the United States pursuant to 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 more than one year and seeking admission within ten years of his last departure from the United States. The applicant seeks a waiver of his ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to return to the United States to join his United States citizen wife.

The director determined that the applicant had failed to establish a qualifying family member would suffer extreme hardship if the applicant were denied admission to the United States. The applicant's Form I-601, Application for Waiver of Ground of Excludability (now referred to as Inadmissibility), was denied accordingly.

On appeal, counsel submits a letter from the applicant's wife. Counsel contends that this letter addresses the issue of extreme hardship and it supplements her original statement. The entire record was reviewed and considered in rendering 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 the Secretary of 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.

In the present case, the record shows that the applicant, a native and citizen of Bangladesh, entered the United States without inspection in January 1997. The applicant was fourteen years old at the time of his entry into the United States. On May 12, 2003, the applicant married [REDACTED], a

United States citizen, in Miami Beach, Florida. [REDACTED] filed a Form I-130, Petition for Alien Relative, on behalf of the applicant. This petition was approved on November 17, 2004. On July 20, 2005, the applicant returned to Bangladesh with the intent to apply for his immigrant visa at the United States Consulate in Dhaka.

Time in unlawful presence begins to accrue on April 1, 1997, the date of enactment of unlawful presence provisions under the Act. However, no period of time in which an alien is under eighteen years of age shall be taken into account in determining the period of unlawful presence in the United States. Section 212(a)(9)(B)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii)(I). The applicant entered the United States without inspection in January 1997 when he was fourteen years old. He began accruing unlawful presence in the United States when he turned eighteen years old on July 10, 2000. The applicant remained in the United States from July 10, 2000 until his departure to Bangladesh on July 20, 2005. The applicant accrued five years of unlawful presence during this time period. The applicant is seeking admission within ten years of his July 20, 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) 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. Hardship the alien himself experiences upon refusal of admission is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. In the present case, the applicant's wife is a qualifying family member for section 212(h) of the Act extreme hardship purposes. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative 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.

furnished two written statements as supporting evidence with the waiver application. She asserts in her initial statement, dated August 17, 2005:

In the event my husband's application is denied, I would be at a financial disadvantage since he was assisting me in my efforts to improve & expand my standard of living. I had also made plans to return to school with my husband's financial assistance. Absent his financial help, my plans would be curtailed.

I respectfully maintain that a separation from my husband, would have result in severe emotional consequences to both concerned parties, uncurable [sic] by the passage of time. My husband and I, have been inseparable companions after our marriage, periodically calling each other whenever we are apart for extended periods of time. We depend on each [sic] for moral as well as spiritual support. We were planning soon to have a family and raise our child in an American culture and society. Additionally, I contend that up-rooting my husband from the American culture and having to adjust to a new society in Bangladesh, would result in a cultural shock, having to learn completely new customs.

I have no ties to the country of Bangladesh and I have no friends nor family members to help in my moral obligations to my husband. I am well accepted by the community at large in Miami, Florida and all of our friends have become accustomed to us as a couple.

On appeal, [REDACTED] furnishes the following additional statement, dated July 9, 2006:

I am depressed at all times. Loneliness [sic] is really [sic] disturbing me now. I always remember my past how happy I was, happiness were all around me. . . . I am having a very difficult time living by myself, so as my husband suffering so much while he's there in Bangladesh. All human being deserves to have a better life and a bright future. . . . It is too much for us to pay just for one mistake. Please do me a favor approve my case. . . . Please don't put me in [sic] a situation that I have to go to Bangladesh to live with my love. Please excuse and forgive us. . . .

[REDACTED] contends in her initial statement that her husband would suffer from culture shock if he were denied admission to the United States. She indicates in her statement, furnished on appeal, that her husband, who is now in Bangladesh, is "suffering so much." In addition, the applicant asserts in his own statement, "I am really having a hard time staying here in Bangladesh. I lived in the U.S. for so long that I have adjusted in U.S. Culture and the way of living and I can't wait to go back in the United States." However, hardship the alien himself experiences upon refusal of admission is irrelevant to section 212(a)(9)(B)(v) waiver proceedings.

The relevant issue in this proceeding is the hardship [REDACTED] would suffer if the applicant is refused admission to the United States. According to [REDACTED] statements, she would lose her social network if she moved to Bangladesh, as she indicated that she has no family members, friends or any other cultural ties to Bangladesh. Regarding [REDACTED] lack of cultural ties to Bangladesh, the AAO notes that the U.S. Department of State reports that women in Bangladesh remain in a subordinate position in society:

Incidents of vigilantism against women--sometimes led by religious leaders (by means of fatwas)--occurred. Acid attacks remained a serious problem. Assailants threw acid in the faces of women and a growing number of men, leaving victims

disfigured and often blind. From January to December, according to Odhikar, 161 persons were attacked with acid. Of these, 96 of the victims were women, 42 were men, and 23 were children. . . . Women remained in a subordinate position in society, and the government did not act effectively to protect their basic rights.

Country Reports on Human Rights Practices-*Bangladesh*, U.S. Department of State, March 11, 2008.

Given the prevalence of violence against women in Bangladesh, and [REDACTED]'s lack of family members, friends or any other cultural ties to Bangladesh, it has been established that she would suffer extreme hardship if she relocated to Bangladesh due to the applicant's inadmissibility.

Although hardship to [REDACTED] in the event that she accompanies the applicant to Bangladesh is material for establishing eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, it is not the only factor to be considered. Extreme hardship to [REDACTED] must be established in the event that she accompanies the applicant or in the event that 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. In the present case, the applicant has not established that [REDACTED] would suffer extreme hardship if she remained in the United States without him.

[REDACTED] asserts in her statement, filed on appeal, that she is suffering from extreme emotional hardship due to her separation from the applicant. She maintains that she is suffering from depression and loneliness since their separation. [REDACTED] indicates in her initial statement that a separation from her husband would have "severe emotional consequences." However, there is no documentation in the record showing that [REDACTED] has been evaluated by a licensed mental health professional. Such documentation would establish the severity and implications of [REDACTED] depression, its connection to her separation from the applicant, and whether she is currently engaged in a treatment plan. 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)).

[REDACTED] further asserts that if she remained in Bangladesh without the applicant she would be in a "financial disadvantage" because the applicant was assisting her in her efforts to improve her standard of living. She contends that she had plans to return to school with the applicant's financial assistance. The AAO recognizes that the refusal of the applicant's admission to the United States may cause economic detriment to [REDACTED]. However, her inability to attend school or a reduction in standard of living does not necessarily result in extreme hardship. U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from

friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”)

Furthermore, 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. The AAO recognizes that [REDACTED] 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 deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.