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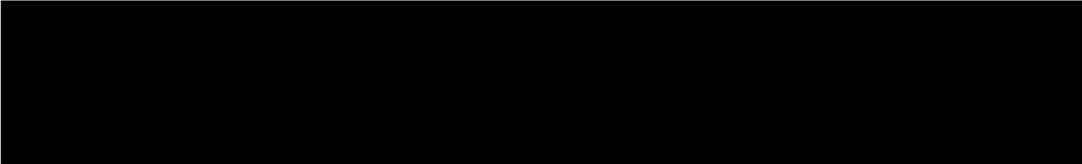


FILE:  Office: NEW DELHI, INDIA Date: FEB 25 2008

IN RE: Applicant: 

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant, a native and citizen of Bangladesh, initially entered the United States as a visitor on February 22, 1991, with authorization to remain until August 21, 1991. The applicant remained in the United States beyond August 21, 1991 without authorization. The applicant filed Form I-589, Application for Asylum and Withholding of Deportation in November 1992. The applicant's request for asylum was denied by an Immigration Judge on November 9, 1993; he subsequently appealed. On February 15, 2000, the Board of Immigration Appeals (BIA) dismissed the pending appeal and granted the applicant permission to voluntarily depart the United States. In the meantime, the applicant married a now U.S. citizen, who filed Form I-130, Petition for Alien Relative, on behalf of the applicant on May 19, 1999. On July 24, 2001, the applicant filed Form I-485, Application to Adjust to Permanent Resident Status (Form I-485).

On November 7, 2001, a Form I-166, Notice to Deportable Alien of Departure Arrangements, was issued to the applicant, directing him to report for deportation on December 3, 2001. On November 29, 2001, counsel for the applicant filed a motion to reopen deportation proceedings and a request for stay of deportation. Said motion was denied by the BIA on February 7, 2002. The applicant departed the United States on June 16, 2002.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* As such, the applicant accrued unlawful presence from February 15, 2000, the day the BIA dismissed his appeal, through July 24, 2001, the day the applicant filed the Form I-485. The applicant 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge, dated April 11, 2006.*

In support of the appeal, counsel submits a brief, dated June 14, 2006; a statement from I [redacted] regarding Christians in Bangladesh, Country Conditions and Persecution, dated June 7, 2006; numerous articles regarding country conditions and religious turmoil in Bangladesh; a list of the applicant's and his spouse's relatives in the United States and their legal status; a statement from the applicant's spouse, dated May 22, 2006; a checking account statement for the applicant's spouse; and information about airline prices for travel to Bangladesh. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

(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...

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant, their child, or their extended family members, cannot be considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), 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. 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The applicant first asserts that the applicant's spouse is experiencing emotional and psychological hardship due to the applicant's inadmissibility. As stated by the applicant's spouse,

...I lose sleep worrying about him [the applicant] being in a place so far away from me where there are so many people who would hurt him because of his faith. It is a horrible feeling knowing that I am so far away and that there is nothing I can do to keep my husband safe....

I recently went to Bangladesh to visit [the applicant] and, on that visit, I was blessed to conceive a child. It is one of the happiest events of my life, but it is also very difficult to have to go through this alone without [redacted]. He is a great husband and he will be a great father, if he can have the chance.... I recently went to the doctor's office and I heard our baby's heartbeat for the first time. I was heartbroken that [redacted] could not be there with me to experience this miraculous event. [redacted] is a good man, he will be an excellent father to our child, and I need his support in raising our child. I barely can support myself now, and the extra burden of a child will be even more difficult to bear all by myself....

Letter from [redacted]

To further support the applicant's spouse's assertions, a letter is provided from [redacted] MBBS. As [redacted] states,

...I am [redacted], a physician from Bangladesh living in the United States for the last ten years. I practiced medicine from 1973 to 1994, the time I moved to the USA. Currently I am employed full time as Project Manager with Turning Point, an out patient drug and alcohol counseling center.... I have known [redacted] [the applicant] and [redacted] [the applicant's spouse] for many years....

Since [redacted] left United States, my wife and I have observed noticeable negative changes in [redacted] behavior and mental state. Separation from her husband is a psychosocial stressor. Based on my medical background, it is my opinion that this is leading her towards a major depressive disorder. There is a potential risk of suicide, substance abuse, and other anxiety-related problems facing [redacted]. Her present symptoms of restlessness, fatigue, difficulty concentrating, irritability, loss of appetite, and sleep disturbances indicate that she is in the beginning stages of such a disorder. These symptoms will only worsen as the length of separation from her husband increases.

[redacted] recently became pregnant on a trip to Bangladesh to see her husband. [redacted] is running through the first trimester of her pregnancy now and she needs a lot of emotional support from her husband.... Her upcoming

psychosocial crisis very likely will interfere with the normal developmental process of the fetus if left unresolved. The level of her isolation, loneliness, and lack of interest for all social events is also very threatening to both [REDACTED] and her unborn child. The emptiness in her life caused by the continued absence of her husband is too painful and the burden is on the relationship, which will suffer in the long run. The whole situation is negatively affecting three lives....

Letter from [REDACTED] MBBS, MPH, CRC, dated July 22, 2004.

The letter from [REDACTED] does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering his findings speculative and diminishing the letter's value to a determination of extreme hardship. Moreover, although [REDACTED] references that the applicant's spouse may soon suffer from major depressive disorder, [REDACTED] makes no recommendations for the applicant's spouse's continued care, such as regular therapy sessions or other treatment with a mental health professional, and/or medications, to further support the gravity of the situation. Finally, no documentary evidence is provided by a licensed physician or mental health expert who has been treating the applicant on a regular basis, to verify the applicant's spouse's current mental state and the short and long-term treatment plan for her condition. 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's letter establishes that the applicant has a very loving and devoted spouse who is extremely concerned about the applicant's inadmissibility from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in hardship to individuals and families, 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, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section (a)(9)(B)(v) of the INA, be above and beyond the normal, expected hardship involved in such cases.

The AAO recognizes 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. U.S. court decisions have repeatedly held that the common results of removal 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 applicant's spouse further states that she is suffering extreme financial hardship due to the applicant's inadmissibility. As stated by the applicant's spouse,

...After having [REDACTED] leave the country and the birth of our daughter [REDACTED] I faced a tremendous financial hardship. I was left with no other choice but to move back in with my parents in New York and apply for welfare and housing assistance from U.S. government. All these years [REDACTED] and I living [sic] in America we worked hard to make our daily living and never became subject to be a burden for government up until now. We were proud to be financially independent and now I am ashamed to have to accept a government hand-out, but it is the only way that we be able to survive. I single handedly cannot take care of my daughter and work to meet our financial needs here and support [REDACTED] back in Bangladesh....

Letter from [REDACTED] dated May 22, 2006.

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) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "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."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Counsel has not provided any financial documentation to corroborate that the applicant's departure has been the direct cause of his spouse's financial hardship and that were it not for his inadmissibility, the applicant's spouse would be financially stable. In fact, pursuant to the record, the applicant's spouse was able to support her father and mother financially in 2003 and 2004, well after the applicant's departure. Letter from [REDACTED] [REDACTED] dated October 12, 2004. Moreover, the record indicates that the applicant's spouse has 24 relatives, including aunts, uncles, parents, and siblings, and over 23 cousins residing in the United States; no explanation has been provided as to why they are unable to assist the applicant's spouse with respect to her finances and/or the care of her daughter while the applicant is residing abroad. Finally, it has not been documented that the applicant is unable to obtain gainful employment in Bangladesh, thereby assisting the

applicant's spouse financially. Although the applicant's spouse may need to make alternate arrangements with respect to her financial situation, it has not been established that such arrangements would cause her extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates aboard based on the denial of the applicant's waiver request. In this case, the applicant asserts the following regarding the hardships his wife and child will face were they to relocate to Bangladesh:

...My father, the late [REDACTED] was a renowned Music Director and composer in Bangladesh. Even though he was a renowned personality, he was neglected in his own country because he was a professing Christian. His prominence on one hand and open expression of Christian faith on the other made our family a target of much aggression.... I am faced with the same kind of discrimination every day because of my religion, and my wife and child will be also if they come to Bangladesh....

My mother is also actively involved in the local church and charities. I am a prisoner in my mother's home in Bangladesh because as a minority I have less chance to get a job....

Letter from [REDACTED] dated December 3, 2004.

The applicant's spouse echoes her husband's sentiments regarding hardship in Bangladesh:

...It is very hard to be a Christian in Bangladesh and, given how well-known [REDACTED] family is in Bangladesh, he has been forced to live like a prisoner. [REDACTED] family has had to move away from his boyhood home because of the harassment they suffered, including the attacks on their church in 1986. He cannot leave the house unless he is in a group, and even then he is not safe. Clifford and his church hold a prayer night on the last Thursday of every month where they openly practice the Christian faith. Recently, Clifford and his mother were attacked as they were leaving the prayer night....

Given the hostility in Bangladesh towards Christians and U.S. citizens, I am unable to move there to be with my child.... I am very concerned about the hardships that our child and I would face there if we had to move permanently to Bangladesh to be with [REDACTED] As American citizens in Bangladesh, we would be subject to harassment based on our nationality, in addition the harassment due to our religious beliefs....

Supra at 1-2.

[REDACTED], professor and consultant specializing in the society, politics, and economics of numerous South Asian countries, including Bangladesh, states the following regarding Christianity in Bangladesh:

...The outlook for Christians returned to Bangladesh, in the context of growing discrimination, harassment, and persecution for those who reside in the country, is highly unfavorable. The situation in Bangladesh is becoming daily more parlous for its religious minorities, even though they are long resident, generally supported the independence movement, and colloquially put, try to mind their own business and go about the everyday routines of life. Their ceremonies, temples, and churches are increasingly suppressed or vandalized. Much church and personal property is being seized by force. Extortion is common and farms and businesses are being stolen or destroyed. There is a very high risk that returnees would encounter unsustainable abuse and violence, since the context has worsened....

Christians are vulnerable members of a disadvantaged and threatened minority, whose rights are being increasingly limited, in a country whose government has signaled that it will look away when pressures and illegal and renegade conduct are directed at the minority groups....

Statement of [REDACTED] *dated June 7, 2006.*

The U.S. Department of State, in its Country Specific Information-Bangladesh, states the following:

Bangladesh is currently under a state of emergency. Elections have been postponed until late 2008. The security situation in Bangladesh is fluid, and Americans are urged to check with the U.S. Embassy for the latest information. Spontaneous demonstrations take place in Bangladesh from time to time in response to world events or local developments. We remind American citizens that even demonstrations intended to be peaceful can turn confrontational and possibly escalate into violence. American citizens are therefore urged to avoid the areas of demonstrations if possible, and to exercise caution if within the vicinity of any demonstrations. American citizens should stay up-to-date with media coverage of local events and be aware of their surroundings at all times. Information regarding demonstrations in Bangladesh can be found on the U.S. Embassy Dhaka's website at <http://dhaka.usembassy.gov/>.

A terrorist bombing campaign in the second half of 2005, political violence throughout the country at the end of 2006, and threats to U.S. and Western interests led to increased security around U.S. Government facilities. On August 17, 2005, a banned Islamist terrorist group, Jamaatul Mujahideen Bangladesh (JMB), claimed responsibility for nearly 500 coordinated small bomb blasts in

virtually every part of Bangladesh that killed two persons and injured several dozen. The most recent JMB bombing occurred on December 8, 2005, and the Bangladeshi government subsequently apprehended the known senior leadership of JMB. Six JMB leaders convicted of complicity in JMB attacks were executed on March 29, 2007. JMB and other extremist groups are small in number but remain active and may resume violent activities.

Demonstrations, political activity, and hartals (nationwide strikes) are banned during the state of emergency. Prior to the state of emergency, rallies, marches, demonstrations and hartals were scheduled frequently. In August 2007 violent protests involving thousands of demonstrators occurred in several cities in Bangladesh. Authorities imposed a curfew to restore calm. Protests involving workers from the large garment-manufacturing industry are not uncommon. Visitors to Bangladesh should check with the Consular Section of the U.S. Embassy in Dhaka for updated information on the current political situation.

Due to kidnappings and other security incidents, including those involving foreign nationals, U.S. citizens are advised against traveling to the Khagrachari, Rangamati and Bandarban Hill Tracts districts (collectively known as the Chittagong Hill Tracts). Foreigners traveling in the Chittagong Hill Tracts are required to register with local authorities. Additionally, the U.S. Embassy has in the past received reports of incidents of kidnapping, arms and narcotics smuggling and clashes between local Bangladeshis and Rohingya refugees in areas near Rohingya refugee camps in the Teknaf, Kutupalong, Ukhia, and Ramu areas of the Cox's Bazar district. The U.S. Embassy also recommends against travel to these areas. Individuals who choose to visit these districts are urged to exercise extreme caution.

Country Specific Information-Bangladesh, U.S. Department of State, Bureau of Consular Affairs, released November 23, 2007.

Counsel has provided numerous articles about problematic country conditions and religious discrimination in Bangladesh to supplement the above-referenced documentation. Based on the concerns outlined above by the applicant and the documentation provided in support of the appeal, the AAO concludes that the applicant's spouse would face hardship beyond that normally expected of one facing relocation abroad based on the inadmissibility of a spouse. As such, the applicant's spouse would experience extreme hardship if she accompanied the applicant abroad, though, as noted above, not if she were to remain in the United States.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were unable to return to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.