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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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H4

FILE:

Office: NEW DELHI, INDIA

Date: **MAR 03 2009**

IN RE:

Applicant:

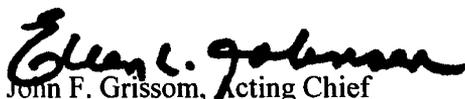
APPLICATION: Application for Waiver of Grounds of Excludability under Section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer in Charge, New Delhi, India, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 37-year-old native and citizen of Bangladesh who was found inadmissible to the United States for having been unlawfully present for over one year. The record reflects that the applicant's spouse, [REDACTED], is a United States citizen. The couple was married in 2001. The applicant entered the United States in 1995 and remained until 2003, when he departed pursuant to a grant of voluntary departure by an immigration judge. He presently seeks a waiver of inadmissibility in order to return to the United States.

The officer-in-charge determined that the applicant was inadmissible, and that he was ineligible for a waiver of inadmissibility because its denial would not result in extreme hardship to his spouse. The waiver application was denied accordingly.

On appeal, the applicant maintains that denial of a waiver would result in extreme emotional and financial hardship to his spouse. The record contains, in relevant part, letters from the applicant and his spouse, medical records pertaining to the applicant's spouse, photographs, and the couple's 2004 tax return.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), provides, in pertinent part:

(B) 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.

The officer in charge found the applicant inadmissible on the basis of his unlawful presence in the United States. The applicant was unlawfully present in the United States from April 1, 1997 when the unlawful presence statute went into effect to 2003 when his voluntary departure was granted. The applicant does not dispute the inadmissibility finding. The AAO therefore finds that the applicant is inadmissible as charged. The question remains whether she is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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’s spouse, \_\_\_\_\_ is a 23-year-old, native of Bangladesh and citizen of the United States. The couple was married in 2001. The applicant’s spouse accompanied him to Bangladesh in 2003, but has since returned to the United States. The AAO notes that the applicant’s wife resides with her parents and brother in the United States. *See* Form I-601, Application for Waiver of Grounds of Inadmissibility. The applicant maintains that denial of a waiver would result in extreme financial and emotional hardship to his wife. The applicant’s wife was recently diagnosed with seizures, and claims to have been suffering from depression and anxiety disorders. The applicant has provided medical records supporting this claim.

The record does not contain sufficient evidence to establish that the applicant's spouse faces extreme hardship due to her separation from the applicant. Although the AAO notes the applicant's wife's mental and physical condition, it is also noted that the applicant has received treatment for her medical conditions both in the United States and in Bangladesh. The AAO also notes that the applicant resides with her parents and brother, and the record does not indicate that they are unable to provide her with care, emotional and financial support. There is also no indication that the applicant's spouse is financially dependent on the applicant. The AAO notes the applicant's spouse's claim that separation from the applicant is causing emotional hardship. Such hardship, however, is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." See *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "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"). The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is denied the waiver.

The AAO notes that the applicant's spouse resided with him in Bangladesh after his departure in 2003. Although the AAO acknowledges that the standard of living in Bangladesh is lower than in the United States, a "lower standard of living [] and the difficulties of readjustment to that culture and environment . . . simply are not sufficient" to demonstrate extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986). The AAO notes further the availability of medical care in Bangladesh, and that relocation would be a matter of choice as the statute does not require the applicant's spouse, a U.S. citizen, to leave the United States. There is no indication that the applicant would experience any other hardship, beyond that which would be faced by any other individual in her situation should she decide to relocate. The record therefore does not support a finding of extreme hardship should the applicant's wife decide to return to Bangladesh.

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *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); *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). Further, 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9) of the Act, the burden of proving eligibility rests 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.