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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

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FILE:

Office: NEW YORK, NY

Date:

APR 12 2010

IN RE:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

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).

Handwritten signature of Perry Rhew in cursive.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal.

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 procuring admission to the United States by fraud or willful misrepresentation. The applicant's father is a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 3, dated August 4, 2008.

On appeal, counsel asserts that the district director failed to consider the evidence in the record and exercise discretion in accordance with the law, acted arbitrarily and capriciously in denying the application, rendered a decision on an incomplete record as the applicant was not granted another interview proposed by the adjudicating officer, made a decision based on assumed facts not in evidence, and denied the application against the facts and law in the case; and the evidence in the record establishes extreme hardship to the qualifying relative and waiver eligibility. *Form I-290B Attachment*, at 1-2, received September 2, 2008.

The record includes, but is not limited to, counsel's brief, statements from the applicant's father and sister, medical information on the applicant's daughter, an evaluation of the daughter's medical treatment, and country conditions information on Bangladesh. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented another person's passport to gain entry to the United States on September 14, 1991. Based on this misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or his child is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative, in this case the applicant's father. 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). The AAO notes counsel's claims regarding the district director's adjudication of the applicant's case. The AAO will adjudicate the waiver appeal based on the relevant law and evidence in the record. The applicant has been afforded the chance to submit any additional evidence to the record.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Bangladesh or in the United States, as the qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in Bangladesh. Counsel states that all of the applicant's father's family members reside outside Bangladesh, his father has strong ties to the United States, he is 72 years old, he is unable to travel without the help of others, his health condition is worsening, he is suffering from various diseases due to senility, and he will be deprived of many facilities provided to him in the United States as is his right as a lawful permanent resident. *Brief in Support of Appeal*, at 4, 6-7, dated October 30, 2008. The record does not include supporting documentary evidence of the applicant's father's various diseases or senility or how they affect his ability to function independently. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant's father states that he loves his granddaughter, he spends time with her and she is his friend in his solitary life, his granddaughter is suffering from Pre-B Cell Acute Lymphoblast Leukemia and needs chemotherapy treatment, his granddaughter's life would be threatened in Bangladesh, she will not be able to survive due to her current condition, she is being treated for her life-threatening disease in the United States, the per capita income in Bangladesh is \$475 a year, the applicant earns \$20,000-\$22,000 per year in the United States, the applicant will not be able to secure a job in Bangladesh, his granddaughter is studying in the United States and has no knowledge

of Bangladesh, the applicant fears that they may be subjected to arsenic poisoning, and they will be deprived of many benefits that they can only realize in the United States. *Applicant's Father's Statement*, at 2-4, dated August 6, 2008.

The record does not include country conditions information that establishes the applicant would be unable to obtain employment in Bangladesh that would allow him to support his family and, therefore, does not demonstrate that the applicant's father would experience financial hardship in Bangladesh. While published reports on the problem of arsenic in the groundwater in Bangladesh are found in the record, they do not indicate that this problem affects Dhakar, the location to which the applicant would be likely to return as it is where he was born and previously owned a stationery store. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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 record reflects that the applicant's daughter has Pre-B Cell Acute Lymphoblastic Leukemia and is receiving treatment for it in the United States. *Letter from [REDACTED] and [REDACTED]* at 1, dated May 23, 2008. The record also includes an evaluation of the applicant's daughter's treatment that states her condition could not be successfully treated in Bangladesh. *Evaluation Report of the Treatment of [REDACTED]* undated. The AAO acknowledges the applicant's daughter's serious health problem but does not find the evaluation, which was prepared by a licensed social worker, to offer sufficient proof of the state of medical treatment in Bangladesh. Moreover, the applicant's daughter is not a qualifying relative for the purposes of this proceeding and the record fails to document how the applicant's father would be affected as a result of his granddaughter's hardship. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's father would suffer extreme hardship if he resides in Bangladesh.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's sister states that the applicant is the only son of their father; according to their custom, a son takes care of retired parents; a daughter goes to her husband's house after marriage; their mother passed away in 1996 and the applicant has been taking care of their father since then; her husband and his family would not agree to accommodate her father as it is not the practice in their custom or community; her father would feel uncomfortable living with her, and it is a shameful practice and disrespectful to her and her father. The applicant's sister also states that the applicant is the only one providing for their father and no one would be able to handle her father in the applicant's absence; her father is suffering from various diseases and the applicant brings him medicine and food, buys clothes for him and takes him to the mosque. *Applicant's Sister's Statement*, at 1-2, dated October 13, 2008.

The applicant's father states that the applicant is his only son; in their custom the son takes care of retired parents; the applicant had to depart Bangladesh in the face of persecution and threat to his life from the police of the ruling party; he loves his granddaughter, he spends time with her and she is his friend in his solitary life; no one would be able to handle him and the applicant is his only hope in his elderly, lonely and solitary life; the applicant takes him to the hospital, brings him medicine and food, and takes him to the mosque; his granddaughter is suffering from Pre-B Cell Acute Lymphoblast Leukemia, the thought of the applicant's deportation and his loneliness without him is terrible and unimaginable. *Applicant's Father's Statement*, at 1-2, 4.

While the AAO notes the claims made by the applicant's sister and father, it does not find the record, with the exception of the applicant's daughter's health concerns, to support them. The record does not include documentary evidence of the applicant's father's various diseases, that it would be against the family's customs if the applicant's father were to reside with his daughter or that the applicant is the sole support of his father. The record also fails to demonstrate the impact on the applicant's father's mental or emotional health if he were to be separated from his son and/or granddaughter. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *Matter of Soffici, supra*. Accordingly, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's father would suffer extreme hardship if he remains in the United States.

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.

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(i) 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.