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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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

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FILE: [REDACTED] Office: BANGKOK, THAILAND Date: **APR 07 2011**

IN RE: Applicant: [REDACTED]

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

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A large, stylized handwritten signature in black ink, appearing to be "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The AAO notes that the applicant's appeal was filed by attorney [REDACTED] however, the record does contain a Notice of Entry of Appearance of Attorney or Representative (Form G-28) for [REDACTED]. On March 12, 2011, the AAO sent counsel a facsimile requesting that he submit a signed G-28 to this office by mail or fax within five business days. The AAO notes no G-28 was submitted. While the AAO will accept all submissions, the decision will be sent only to the applicant and he will be considered self-represented.

The record reflects that 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 through fraud or the willful misrepresentation of a material fact, and section 212(a)(9)(B)(i)(II) of 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 readmission within ten years of his last departure from the United States. The record indicates that the applicant is the spouse of a United States citizen and the father of a United States citizen. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his wife and daughter.

The District Director found 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*, dated September 24, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) "erred in denying the [a]pplicant's application for a waiver of inadmissibility." *Form I-290B*, filed October 27, 2008.

The record includes, but is not limited to, counsel's brief and letter; statements from the applicant, his wife, and daughter; letters of support for the applicant and his wife; medical documents for the applicant's wife; school documents for the applicant's daughter; residency documents for the applicant's wife's family; a lease agreement; a list of the applicant's wife's monthly expenses; country conditions documents on Bangladesh; and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.

- .....
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (1) The Attorney General [now the Secretary 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 immigrant 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...

Section 212(a)(9)(B) of the Act 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.

- (iii) Exceptions.-

.....

- (II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

- (v) Waiver.-The [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 [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 application, the record indicates that on October 15, 1995, the applicant entered the United States by presenting a fraudulent passport. On November 13, 1995, the applicant filed an Application for Asylum and for Withholding of Deportation (Form I-589). On July 22, 1997, an immigration judge granted the applicant voluntary departure until November 22, 1997. On or about September 24, 1997, the applicant filed an appeal with the Board of Immigration Appeals (Board). On February 17, 1998, the Board dismissed the applicant's appeal. On May 7, 1999, the applicant was removed from the United States.

The applicant accrued unlawful presence from February 18, 1998, the day after the Board dismissed the applicant's appeal, until May 7, 1999, when he was removed from the United States. The AAO notes that it has been more than ten years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. Therefore, the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act. However, based on the applicant's presentation of a fraudulent passport in order to enter the United States, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the

child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant’s spouse if she relocates to Bangladesh. In a letter dated October 4, 2007, counsel claims that the applicant’s wife “attempted to move to Bangladesh for an extended period of time last year, even going as far as enrolling [their daughter] in school there, her medical condition deteriorated and she had to return.” Counsel states the applicant’s wife “has had significant health problems in the past, significantly TB meningitis, for which she received treatment and was hospitalized. Currently she suffers from severe depression and anxiety.” The AAO

notes that medical documentation in the record establishes that the applicant's wife has been diagnosed with depression and anxiety, and she suffered from TB-Meningitis in 2004. *See note from* [REDACTED], date illegible; *see also letter from* [REDACTED] dated August 14, 2007; *see also discharge summary by* [REDACTED] dated December 24, 2004. The AAO notes the applicant's wife's medical conditions.

Counsel states that all of the applicant's wife's family resides in the United States, except for a sister who resides in Bangladesh. The AAO notes that the record contains evidence that the applicant's wife's father is a United States citizen, her mother is a lawful permanent resident of the United States, and her brothers are United States citizens. Counsel claims that country conditions in Bangladesh seem "extremely volatile" and "access to appropriate health care, [especially] given [the applicant's wife's] health condition, will endanger her well being and her life." Additionally, counsel claims that women in Bangladesh are in a "dire situation" and it would be difficult to raise the applicant's daughter there. Counsel states "[t]he conditions of [Bangladesh] make it very likely that [the applicant's wife] and her daughter will be exposed to, if not the victims of, violence and prejudice against women. The professional, educational, and emotional opportunities for development and for growth will be severely limited to [the applicant's wife] and her daughter in Bangladesh." The AAO notes the applicant's wife's concern regarding the lack of appropriate health care and country conditions in Bangladesh.

Based on the applicant's spouse's medical issues, lack of appropriate healthcare in Bangladesh, disruption of the applicant's spouse's medical/mental health treatments, the emotional hardship of being separated from her family, having to raise her child in Bangladesh, and the loss of educational opportunities for the applicant's daughter, the AAO finds that the applicant's wife would suffer extreme hardship if she were to return to Bangladesh to be with the applicant.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States without the applicant, counsel states the applicant's wife's "current situation, separated from [the applicant], is causing her extreme hardship. She suffers from severe depression, anxiety and other ailments, and she is fully responsible for care of the couple's 9 year old U.S. citizen daughter." In a statement dated September 29, 2007, the applicant's daughter states her mother has not "been the same," "she is suffering a lot," and she does not "take care of [her] like before." In a statement dated August 14, 2007, the applicant's wife's parents state their daughter "has not been able to sleep, work, or even eat a good meal." In a letter dated June 16, 2009, [REDACTED] indicates that "[m]uch of [the applicant's wife's] depression was coming from the fact that [the applicant] was deported in May of 1999 back to their native country." In a brief dated November 17, 2008, counsel states the applicant's wife "attempted to commit suicide, and was hospitalized for three days at the Mercy Fitzgerald Hospital as a direct result of her attempt." [REDACTED] reports that "hopelessness was building up and [the applicant's wife] ended up with a severe depression following significant agitation and internal preoccupation, hostile aggressive behavior reacting to even normal stressors, culminating in a suicide attempt. [The applicant's wife] was hospitalized by her friend." The AAO notes that the record establishes that the applicant's wife was hospitalized in October 2008 for attempting to jump out of a window. *See preliminary and master treatment plans, psychiatry, dated October 6, 2008. Dr.*

states the applicant's wife is now being "treated with a powerful antidepressant medication and also on a mood stabilizer/antipsychotic medication and she is somewhat less depressed at this time." claims that the applicant's wife is "at risk for decompensation and this lead[s] to a threat to her own life if her current situation of separation from [the applicant] continues since this is clearly an extreme hardship for [the applicant's wife] and she is unable to adapt.... [The applicant's wife's] prognosis is, at best, very guarded." Additionally, as noted above, counsel states the applicant's wife "has had significant health problems in the past, significantly TB meningitis, for which she received treatment and was hospitalized," and she currently "suffers from severe depression and anxiety." The AAO notes the applicant's wife's emotional and medical conditions.

In a statement dated August 14, 2007, the applicant's wife states she cannot work, she is disabled, and the "only support [she] [has] now is welfare." The AAO notes that the applicant's wife claims that her monthly expenses in August 2008 totaled \$1,490.19. Counsel states the applicant "works at his family business in Bangladesh. He supports himself but there is no excess money to send to his wife and daughter in the United States. [The applicant's wife] is currently receiving SSI..., which is her main source of income." The AAO notes that the record establishes that the applicant's wife was determined to be temporarily disabled based on her depression diagnosis, and she received SSI benefits. Additionally, the AAO notes the applicant's wife's financial issues.

Considering the applicant's spouse's emotional issues, medical issues, financial issues, raising a child without her father, and the normal hardships that result from the permanent separation of a loved one; the AAO finds the record to establish that the applicant's wife would face extreme hardship if she remained in the United States in his absence.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's misrepresentation, his failure to depart the United States when required, his removal order, and his unlawful presence. The favorable and mitigating factors are the applicant's United States citizen wife and daughter, the extreme hardship to his wife if he were refused admission, the absence of a criminal record, and letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the appeal will be sustained.

Even though the AAO has now sustained the applicant's appeal and approved his Form I-601, the applicant still needs an approved Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). The AAO notes that the District Director denied the applicant's Form I-212 based on the denial of his Form I-601. However, this basis for denial is no longer valid due to the approval of the Form I-601 waiver application.

**ORDER:** The appeal is sustained.