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



U.S. Citizenship
and Immigration
Services



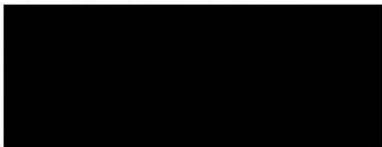
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DATE: **AUG. 25 2011** Office: NEW YORK, NY FILE:

IN RE: Applicant:

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:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and a subsequent appeal was treated as a Motion to Reopen and denied. The AAO will sua sponte reopen the appeal and the appeal will be dismissed.

The applicant is a native and a citizen of Bangladesh who attempted to enter the United States using a fraudulent Bangladesh passport and Temporary Resident Card. The applicant 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). The applicant is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service October 14, 2008. In addition, the District Director denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, on October 16, 2008.

The applicant, through counsel, filed Form I-290B, Notice of Appeal or Motion, on November 13, 2008. In part 2 of the Form I-290B, counsel checked box "B" which states "I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days." Also in part 2 of the Form I-290B, counsel indicated that the "relating application" was the Form I-601. Pursuant to 8 C.F.R. § 103.3(a)(2), when an affected party files a Form I-290B, the official who made the unfavorable decision shall either treat the appeal as a motion to reopen or reconsider and take favorable action, or forward the appeal to the AAO. 8 C.F.R. § 103.3(a)(2)(iii) & (iv).

However, in the instant case, the District Director treated the Form I-290B as Motion to Reopen the Form I-485 and, on April 1, 2009, denied the motion. As noted above, counsel clearly indicated on the Form I-290B that he was filing an appeal. Therefore, the District Director should have either treated the Form I-290B as a motion to reopen or motion to reconsider, or forwarded the appeal to the AAO. The District Director did not have jurisdiction to treat the Form I-290B as a motion to reopen the Form I-485. Therefore, the AAO will sua sponte reopen the matter and adjudicate the Form I-290B as an appeal of the Form I-601.

On appeal, counsel for the applicant asserted that the decision was incorrect as a matter of law, that the District Director failed to give full consideration to the level of hardship that would be suffered by the applicant's spouse and that the waiver should have been granted. *Form I-290B*, received November 13, 2008.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant attempted to enter the United States in 1990 with a fraudulent Bangladesh passport and Temporary Resident Card. The applicant was ordered removed on September 13, 1990, and the order was reinstated on May 22, 2009. The applicant is inadmissible for a period of 10 years pursuant to § 212(a)(9)(A) and must file a Form I-212 in order adjust his status. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure admission to the United States with a fraudulent passport and Temporary Resident Card.

The record contains, but is not limited to, the following evidence: a Psychological/Family Assessment of the applicant's spouse by [REDACTED] L.C.S.W., dated December 12, 2008; a statement from the applicant's spouse; financial documents filed in relation to the applicant's Form I-485; a copy of the applicant's passport and employment authorization document; an employment letter pertaining to the applicant from [REDACTED] International Restaurant Group; an employment letter for the applicant's spouse from [REDACTED] Community Services; birth certificates for the applicant's daughters, bank statements, tax returns, school records and pay stubs for the applicant's husband.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(i) of the Act provides, in pertinent part:

- (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.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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).

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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for

28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's spouse has submitted a statement asserting that she is financially dependent on the applicant and that without his income she could lose their home to foreclosure. *Statement of the Applicant's Spouse*, dated July 2, 2008. She states that separation would wreak havoc on their lives, that she would be a "nervous wreck" if separated from the applicant and that the applicant acts as a father figure to her daughter.

The record includes some financial documentation which was filed in conjunction with the applicant's Form I-485 and an employment letter indicating the applicant has been employed. While these documents indicate the applicant may have earned some income or contributed to family finances, they do not indicate that the applicant's spouse would be unable to meet her financial obligations if he were not admitted to the United States. In addition, there is no evidence that the applicant and his spouse own a home, or that his spouse has accumulated any debt or would experience any financial impact which rises above that commonly experienced by the relatives of inadmissible aliens who remain in the United States.

The record includes a psychological assessment from Nancy Kahn, a licensed clinical social worker. In her assessment Ms. [REDACTED] states that the applicant's spouse has suffered from abusive relationships, has a chronic history of depression and is experiencing symptoms such as vertigo, crying, lack of sleep, feelings of hopelessness and irritability. She concludes that, upon separation, applicant's spouse would be at risk for extreme psychological hardship and that she is at "grave risk of becoming actively suicidal." The record does not contain any corroborating documentation of the applicant's spouse's physical symptoms or previous diagnosis of depression. Although the input of any mental health professional is respected and valuable, the AAO notes that the Ms. [REDACTED] conclusions are based on a single interview and do not reflect any ongoing relationship. In addition, the record does not contain any other documentation which corroborates the assertions made in the evaluation, or documentation which might otherwise support Ms. [REDACTED] conclusions. The AAO finds that the conclusions reached by Ms. [REDACTED] are speculative in nature and do not reflect the insight and elaboration commensurate with an established relationship with a psychologist or other mental health professional, thereby diminishing the evaluation's value to a determination of extreme hardship.

Even when the impacts asserted upon separation in this case are considered in aggregate, the AAO finds that the hardship that the applicant's spouse would face do not rise to the level of extreme.

The applicant's spouse has asserted that she would be unable to relocate with the applicant due to the fact that she is a Christian and that Bangladesh discourages mixed marriages. The record does not contain any evidence to support this assertion. There are no country conditions materials or other documents which indicate that the applicant's spouse would experience any uncommon hardship due to the fact that she is a Christian.

The AAO does note that the applicant's spouse has a daughter and other immediate family members who reside in the United States and that separation from them would result in some emotional impact. However, even when the impacts asserted are considered in aggregate, there is insufficient evidence in the record to establish that the applicants' spouse would experience hardship rising to the level of extreme in the event she relocated with the applicant. Based on these observations, the AAO concludes that the record fails to establish hardship to a qualifying relative upon relocation.

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 faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse might endure some economic and emotional impact due to the applicant's inadmissibility. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.