

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



H5

DATE: Office: ATLANTA, GA

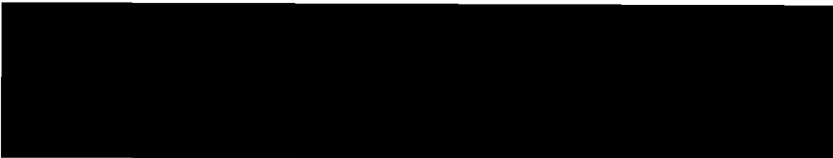
DEC 02 2011

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 Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Bangladesh who used false documents in an attempt to enter the United States. 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). He is the spouse of a lawful permanent resident and is the father of two U.S. citizen children. 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 Field Office 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) on May 21, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director erred in denying the application and that the applicant's spouse and children will suffer extreme hardship, and asks the AAO to review the file. *Form I-290B*, received June 19, 2009.

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 presented a passport and visa with a false name when attempting to enter the United States in July 1996. The applicant withdrew his application for admission on that date, but subsequently entered the U.S. in August 1996. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant; a statement from the applicant's spouse; country conditions materials on Bangladesh; tax returns for the applicant and his spouse; school records for the applicant's oldest son; school records for the applicant's youngest son; copies of a court disposition for a charge against the applicant in 1996; a mental health evaluation of the applicant's spouse by [REDACTED], dated October 31, 2008; copies of three prescription receipts for the applicant's spouse in June and July 2009; a hand-written note on a prescription form from the desk of [REDACTED].

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 may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 Pich* 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.

Counsel asserts on appeal that the applicant’s spouse and children would experience extreme hardship upon relocation to Bangladesh. *Statement in Support of Appeal*, received July 20, 2009. Counsel asserts that Bangladesh is one of the poorest countries in the world with high levels of unemployment, widespread crime, unsuitable medical care, unsafe drinking water, rampant disease and political instability. He states neither the applicant nor his spouse has resided in Bangladesh in many years, that neither have any family ties to the country, that their children do not speak Bangladeshi, and that there would be no opportunities for the applicant’s spouse as a woman.

The record includes country conditions materials on Bangladesh, including, but not limited to, the Travel page from the U.S. Department of State, the Country Report on Human Rights Practices, published by the U.S. Department of State’s Bureau of Democracy, Human Rights and Labor, 2007. The materials submitted establish that Bangladesh is a developing country and has struggled to develop its infrastructure and economic wealth. However, while Bangladesh may not offer the same quality of life or standard of living as the United States, that is not sufficient to establish extreme hardship. The materials submitted do not establish that the applicant’s spouse, children or even the applicant would not have access to healthcare, and in fact, the Travel page on Bangladesh from the

U.S. State Department merely states that medical facilities there “do not meet U.S. standards.” In this case, the record indicates that the applicant’s spouse is from Bangladesh, and is familiar with its languages, social customs and security protocols. The applicant’s spouse stated during the course of a mental health examination that she earned a master’s degree in psychology while she resided in Bangladesh. The record also indicates that the applicant and his spouse would reside in Dhaka, one of Bangladesh’s largest cities, where there would be greater access to health care facilities and employment. In light of these observations the AAO does not find that the applicant’s spouse would experience uncommon acculturation impacts upon relocation to Bangladesh.

As noted above, children are not qualifying relatives in these proceedings, and as such, any hardship to them may only be considered as to the impact it has on the qualifying relative, in this case the applicant’s spouse. While the applicant has asserted that his children would experience extreme hardship upon relocation, the AAO notes that one of the applicant’s children is now 22 years old and considered an adult, and the record does not contain sufficient evidence to indicate that the applicant’s other son, 11 years old, would experience any hardship to such a degree that it would create an indirect hardship on the applicant’s spouse.

The AAO recognizes that the applicant’s spouse has family ties in the United States. However, in light of the observations above, even when the hardship factors asserted upon relocation are considered in the aggregate, the record does not contain sufficient evidence to establish that the applicant’s spouse would experience uncommon hardships rising to the level of extreme upon relocation to Bangladesh.

Counsel for the applicant asserts that the applicant’s spouse and children would experience financial and emotional hardship upon separation. *Statement in Support of Appeal*, received July 20, 2009. Counsel asserts that the applicant is the sole source of income for their family, and that the applicant’s spouse does not have experience running a business and would not be able to operate the applicant’s business. Counsel asserts that without the applicant’s income they would not be able to afford private school for the applicant’s younger son or college for the applicant’s older son and asserts that this will have an impact on their emotional development. Counsel also asserts that the applicant’s spouse has been experiencing depression since the applicant’s application was denied, and that she has been prescribed medication to treat her condition.

The record contains some background materials on the benefits of education for immigrants in relation to these assertions. As noted above, children are not qualifying relatives in this proceeding. The inability to attend a private school or college is not considered a significant hardship factor, and the AAO notes that the applicant’s older son is considered an adult for immigration purposes. The record does not establish that the applicant’s sons would experience any hardships which rise to the level of creating an indirect hardship on the applicant’s spouse.

With regard to the emotional hardship experienced by the applicant’s spouse, the record contains a mental health status report from [REDACTED], and several prescription notes dated in June and July 2009. The evaluation from [REDACTED] narrates the emotions of the applicant’s spouse and

concludes that she is suffering from Acute Stress Disorder and Adjustment Disorder with Depressed Mood. The record also contains a statement from [REDACTED] which asserts the applicant's spouse's depression is getting worse. Prescription Note, [REDACTED], dated July 7, 2009. The AAO will give consideration to the emotional hardship factor when aggregating the impacts on the applicant's spouse.

The applicant's spouse has also submitted a statement asserting that she will experience anxiety related to the fact that the applicant has several medical problems and that upon being removed to Bangladesh would not be able to find adequate medical care. A November 21, 2008, statement from [REDACTED], states the applicant has several medical problems, including a cardiac stent, Diabetes Mellitus Type II and a bleeding ulcer. The AAO notes that hardship to an applicant are not directly relevant to establishing extreme hardship to a qualifying relative in this proceeding, but will nonetheless examine whether such impact indirectly affect a qualifying relative to such a degree that it creates a hardship factor. The country condition materials discussed above do not establish that the applicant would be unable to receive adequate medical care for his conditions, and do not establish that he would be unable to find employment or health insurance upon his return to the country. The AAO does not find the record to support the applicant's spouse's assertions and therefore it is not persuaded that they represent an indirect emotional hardship factor on the applicant's spouse.

With regard to the financial impact upon separation, the record contains numerous tax returns and business records for the applicant's convenience store. While the applicant's spouse has submitted a statement asserting she does not have any business operation experience, and counsel asserts she would be unable to operate the applicant's business, the AAO notes that this does not establish that the applicant's spouse would be unable to work in order to meet her financial obligations. The inability to work in a chosen profession or within a chosen status (manager) does not constitute a financial hardship factor. In this case, the applicant's spouse has an advanced education, admits that she has had some management experience and was granted her Lawful Permanent Resident status based on being a skilled worker. In light of the fact that the applicant's spouse works at the store and has had some management experience the AAO does not find the record to establish she would be unable to run the business. Nor does the record contain any documentation that the applicant's spouse would be unable to find other employment in the United States. The AAO notes that there is no evidence the applicant's oldest son would not be able to obtain employment in order to help mitigate the financial impact of the applicant's departure. Based on these observations, the AAO does not find the record to establish that the applicant's spouse would experience uncommon financial impact upon separation.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. 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. As the applicant has failed to establish that a qualifying relative will experience extreme hardship, there would be no purpose served in determining whether the applicant warrants 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.