

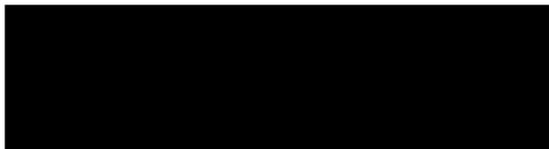
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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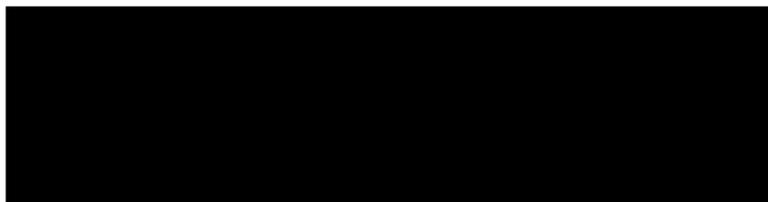
Office: ST. LOUIS

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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Louis, Missouri. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted and the waiver application will be approved. The matter will be returned to the field office director for continued processing.

The applicant, a native and citizen of Bangladesh, 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 having attempted to procure numerous immigration benefits on multiple occasions, including entry to the United States and permanent residency, by fraud and/or willful misrepresentation.

In June 1993, the applicant attempted to procure entry to the United States by presenting a passport belonging to another individual, [REDACTED]. He noted that his true and correct name was [REDACTED]. *Record of Sworn Statement in Affidavit Form*, dated June 23, 1993. Subsequently, the applicant filed a Form I-589, Request for Asylum in the United States in July 1993 under the name [REDACTED]. Said application was denied and the applicant was ordered excluded and deported. *Memorandum of Oral Decision*, dated March 21, 1995. A subsequent appeal was dismissed. *Decision of the Board of Immigration Appeals*, dated November 8, 1996. The applicant was given an order to surrender, dated December 16, 1997, for surrender on January 23, 1998. The applicant wrote a letter advising that he had voluntarily departed the United States prior to January 23, 1998. *Letter from [REDACTED]* dated January 12, 1998.

In November 2002, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) under the name Mitu Rah Shamim. He also provided a different year of entry into the United States, claiming he had entered the United States in 1996, rather than in 1993, as outlined above. The applicant further failed to disclose that he had attempted to procure entry to the United States in June 1993 by fraud or willful misrepresentation, by presenting a passport belonging to another individual. Finally, he failed to disclose that he had been in exclusion or deportation proceedings. *Form I-485*, dated November 12, 2002.

In October 2003, the applicant provided a sworn statement, stating that his name was [REDACTED] that he first came to the United States in 1996, that said entry was the first time he had entered the United States, that he had not had any problems crossing the border, and that he had been in Bangladesh in 1993. He further stated that once he had entered the United States, he had not departed, as had been ordered, despite his letter stating the contrary, as outlined above. *Statement by [REDACTED]* dated October 21, 2003.

Based on the applicant's attempted entry to the United States in 1993 by presenting a fraudulent passport and his subsequent actions with respect to his true identity and his immigration history when filing his I-485 in November 2002, and at his I-485 interview in October 2003, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. The applicant does not contest the field office director's finding of

inadmissibility. Rather, the applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and children, born in 2003 and 2010.

The field office 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 Field Office Director*, dated December 4, 2007.

On appeal, the AAO determined that extreme hardship to a qualifying relative had been established. Nevertheless, the AAO concluded that the unfavorable factors, the applicant's numerous and flagrant violations of United States immigration laws, outweighed the favorable factors in the application. Thus, a favorable exercise of the Secretary's discretion was not warranted. Consequently, the appeal was dismissed. *Decision of the AAO* dated October 1, 2010.

In support of the instant motion, counsel for the applicant submits a brief, dated October 26, 2010, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

- (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:

- (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 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 (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...

In Matter of Mendez-Moralez, 21 I&N Dec. 296, the Board of Immigration Appeals (BIA) stated:

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a

criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[b]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

As noted above, the AAO determined that extreme hardship to a qualifying relative had been established in the present case. In assessing whether the applicant merited a waiver as an exercise of discretion, the AAO stated:

The favorable factors in this matter are the extreme hardship the applicant's lawful permanent resident spouse and U.S. citizen child would face if the applicant were to relocate to Bangladesh due to his inadmissibility, regardless of whether they accompanied the applicant or remained in the United States, the applicant's apparent lack of a criminal record, gainful employment, support letters from friends, family members and colleagues, certificates of achievement issued to the applicant, and payment of taxes.

The unfavorable factors in this matter are the applicant's attempted entry to the United States in 1993 by presenting a fraudulent passport, his failure to disclose his true identity throughout his asylum and removal proceedings before an immigration judge, his written assertion that he had voluntarily departed the United States when, in fact, he had not, his assertion under oath on October 21, 2003 that he had never entered the United States prior to 1996, his failure to reveal his prior removal order on his Form I-485 filed on November 19, 2002, and his failure to comply with his deportation order from the United States, all discussed in detail above, in addition to periods of unauthorized presence.

The AAO finds that the unfavorable factors, his numerous and flagrant violations of United States immigration laws, outweigh the favorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is not warranted. *Decision of the AAO* dated October 1, 2010 at 7.

On motion, the applicant asserts that he first gave his nickname, [REDACTED] as his legal name at the airport in 1993 pursuant to advice given to him by the smuggling brokers who originally assisted him in procuring entry to the United States, to help him avoid persecution in Bangladesh due to his political beliefs and associations. The applicant contends that he knew what he did was wrong and sought legal advice to correct the situation but his lawyer stated that if he corrected his name, his asylum application would be complicated and further, he would be arrested and deported to Bangladesh. *Affidavit in Support from* [REDACTED] dated October 24, 2010.

The applicant further admits that he wrote a letter to USCIS declaring that he had left the United States when in fact he had not. He explains that his lawyer's office drafted the letter and he signed and mailed it with the help of a Canadian friend. The applicant contends that he accepts responsibility for what was done. The applicant explains that he never revealed accurate information because he was fearful of being arrested. He notes and documents that his lawyer and his paralegal were both convicted for conspiracy, false statements and mail fraud. *Id.* at 3.

On motion, the applicant accepts full responsibility for his actions and contends that he is a different man and is sorry for his actions. *Id.* at 4-5. In support of his request for a waiver, the applicant documents that he has sought counseling from several priests and has been praying regularly. In addition, the applicant explains that he is volunteering with Leal Home Funeral to console and guide bereaved families. Moreover, the applicant is actively involved in fundraising for the Bangladesh Association Houston. *Id.* at 7.

As [REDACTED] (Priest) states,

I am the duly ordained Imam of Jamaica Muslim center for about 15 years. As an Imam, I conduct prayers at the Mosque and provide spiritual and religious guidance for the Muslim Community....

[REDACTED] [the applicant] contacted me in March 2006, and narrated a long history of providing false information to the United States Custom and Immigration Service with respect to his identity and concealing information from USCIS....

During a lengthy conference, [REDACTED] was very emotional. He burst into tears numerous times. It was evident that he was suffering enormously from his guilt. [REDACTED] was seeking information about the spiritual consequences of his fraudulent conduct and how he could

absolve himself religiously and spiritually. He voluntarily sought ways to atone for and redeem his offensive conduct. He certainly seemed very remorseful.

Following his confession and admission, I made him promise not to repeat his conduct. In Islamic law, a sinner has to make 'Touba', which is a promise not to repeat the same sin and commit any injustice to others. I administered Touba three times, and prescribed certain prayers to perform and asked him to get back to me.

Mr. [REDACTED] finished his lessons and timely reported back to me. He has been continuing to seek information and advice....

Letter from [REDACTED] dated October 22, 2010. Two additional imams have provided letters in support of the instant motion.

In addition, on motion counsel has provided additional documentation regarding the problematic country conditions in Bangladesh and the hardships the applicant's spouse and two children would encounter were they to relocate abroad to reside with the applicant. Alternatively, counsel has provided updated documentation establishing that the applicant's U.S. citizen spouse suffers from Major Depressive Disorder and is unable to function independently and will thus experience extreme hardship if her husband relocates abroad due to his inadmissibility. *Letter from [REDACTED] dated October 11, 2010.*

In addition to the applicant taking responsibility and showing remorse for his fraudulent actions and the applicant's family's hardships were the applicant to relocate abroad, favorable factors in this matter include the applicant's apparent lack of a criminal record, long-term gainful employment, support letters from friends, family members, colleagues and religious leaders, community involvement, volunteer work, certificates of achievement issued to the applicant, and the payment of taxes.

The unfavorable factors in this matter, as previously outlined by the AAO, are the applicant's attempted entry to the United States in 1993 by presenting a fraudulent passport, his failure to disclose his true identity throughout his asylum and removal proceedings before an immigration judge, his written assertion that he had voluntarily departed the United States when, in fact, he had not, his assertion under oath on October 21, 2003 that he had never entered the United States prior to 1996, his failure to reveal his prior removal order on his Form I-485 filed on November 19, 2002, and his failure to comply with his deportation order from the United States, all discussed in detail above, in addition to periods of unauthorized presence.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, on motion, the AAO finds that in sum, the applicant has demonstrated

substantial equities in his favor. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the motion will be granted and the application will be approved.

ORDER: The appeal is sustained. The application is approved. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.