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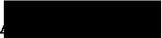
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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Date: **APR 11 2012**

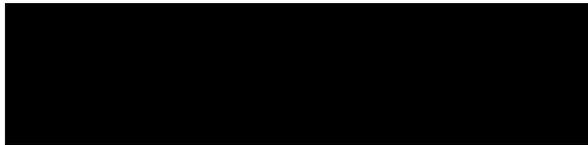
Office: **BANGKOK**

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), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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 District Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The record reflects that the applicant is a native and citizen of Bangladesh who entered the United States in 1995 without authorization. In November 1997, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), as a diversity visa applicant utilizing a fraudulent name and date of birth. *Letter from Mahmud Hussain*, dated June 17, 2011. The Form I-485 was denied in January 1999. In February 2005, the applicant was granted voluntary departure until April 4, 2005 with an alternate order of removal. The applicant filed a Petition for Review of a Final Order of Deportation with the U.S. Court of Appeals for the Ninth Circuit in March 2006. The applicant departed the United States in May 2008. In August 2010, it was determined that the applicant's failure to appear and proceed with any applications for relief from removal constituted an abandonment of any pending applications. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality 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 under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure permanent residence by fraud or willful misrepresentation. The applicant does not contest the district director's findings of inadmissibility. Rather, he seeks waivers of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and under section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his lawful permanent resident father.

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*, dated July 27, 2011.

On appeal, counsel for the applicant submits the following: a brief; an affidavit from the applicant's father; an updated psychological assessment from [REDACTED] Ph.D.; and a letter from the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

. . . .

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

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 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(a)(9) 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.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (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 Attorney General [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...

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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. The applicant's lawful permanent resident father is the only qualifying relative in this case. Hardship to the applicant or his U.S. citizen brother can be considered only insofar as it results in hardship to a qualifying relative. 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 lawful permanent resident father contends that he will suffer emotional and physical hardship were he to reside in the United States while the applicant remains abroad due to his inadmissibility. In a declaration, the applicant's father, currently in his 80s, explains that he has been suffering medically because of prostate issues. He contends that he needs his son to help care for him as he is now wearing diapers and needs daily assistance. The applicant's father notes that although his U.S. citizen son [REDACTED] assists him as much as he can, he works full-time to provide for his wife and children so he is not always home and his daughter-in-law is unable to physically move him, change him, or pick him up. The applicant's father references that his two other sons are unavailable to assist, as one has relocated to England and the other son is disabled. The applicant's father further details that he is depressed and wants his son to be near him. *Declaration of Hafiz Uddin*, dated August 23, 2011. The applicant details that he is the eldest son and it is his responsibility to care for his elderly father, especially since his mother is no longer alive. The applicant further confirms that his brothers are busy with their own lives and are thus unable to properly care for his father. *Letter from [REDACTED]* dated August 20, 2011.

In support, medical documentation has been provided from the applicant's father's treating physician establishing that the applicant's father has a prostate condition and although his urinary problems have improved, he is still weak, unable to walk except with help and is in no condition to travel, particularly long distances. Moreover, psychological reports have been provided outlining the applicant's father's depression as a result of his son's inadmissibility and the need for the applicant to return to the United States to help care for his father. The record reflects that the cumulative effect of the emotional and physical hardship the applicant's father would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's father, currently in his 80's, would suffer extreme hardship if he remains in the United States.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. With respect to this criterion, the applicant explains that he has been unable to obtain gainful employment in Bangladesh to support himself and his family and thus, were his father to return to Bangladesh, the applicant would not be able to afford proper care and treatment for his father. In addition, the applicant notes that medical care in Bangladesh is substandard and thus, were his father to relocate to Bangladesh, he would suffer. *Supra* at 1.

The record reflects that the applicant's elderly father became a lawful permanent resident of the United States more than fourteen years ago. He has extensive family ties in the United States, including the presence of two children and their families. Were he to relocate to Bangladesh to

reside with the applicant, he would have to return to a country with which he is no longer familiar and he would have to leave the physicians familiar with his medical condition and treatment plan. Finally, the U.S. Department of State confirms the problematic country conditions in Bangladesh, including being one of the poorest and most densely populated countries in the world¹, as well as having substandard medical care.² Based on a totality of the circumstances, the AAO finds that relocating abroad to reside with the applicant would cause the applicant's father extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his lawful permanent resident father would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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).

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

¹ *Background Note-Bangladesh*, U.S. Department of State, dated March 6, 2012.

² The U.S. Department of State notes the following regarding medical care in Bangladesh:

The general level of sanitation and health care in Bangladesh is far below U.S. standards. There is limited ambulance service in Bangladesh and attendants seldom are trained to provide the level of care seen in the United States. Traffic congestion and lack of a centralized emergency services system (911) makes patient transport slow and inefficient. Several hospitals in Dhaka (e.g., United, Apollo, and Square Hospitals) have emergency rooms that are equipped at the level of a community hospital, but most expatriates leave the country for all but the simplest medical procedures. Hospitals in the provinces are less well-equipped and supplied. Psychological and psychiatric services are limited throughout Bangladesh. There have been reports of counterfeit medications within the country, but medication from major pharmacies and hospitals is generally reliable. Medical evacuations to Bangkok or Singapore are often necessary for serious conditions or invasive procedures and can cost thousands of dollars.

Country Specific Information-Bangladesh, U.S. Department of State, dated January 6, 2012.

(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 "balance 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).

The favorable factors in this matter are the extreme hardship the applicant's lawful permanent resident father and U.S. citizen sibling would face if the applicant were to remain in Bangladesh, regardless of whether they accompanied the applicant or stayed in the United States, the applicant's community ties, his gainful employment while in the United States and the passage of more than ten years since his entry to the United States without authorization and his fraud or willful misrepresentation as outlined in detail above. The unfavorable factors in this matter are the applicant's entry without authorization, his fraud or willful misrepresentation when applying for permanent residency, unlawful presence and unlawful employment while in the United States, his failure to depart pursuant to a voluntary order and his removal order.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

ORDER: The appeal is sustained. The waiver application is approved.