

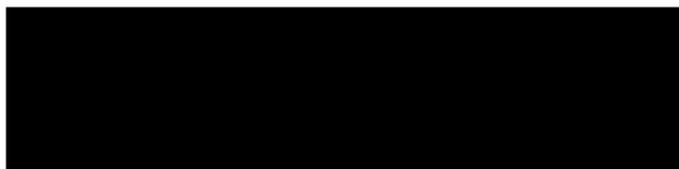
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



HLS

Date: **AUG 02 2012**

Office: CHICAGO, IL

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated November 27, 2009.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant's wife's medical conditions and country conditions in Bangladesh.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on March 18, 2004; copies of the birth certificates of the couple's two U.S. citizen children; an affidavit from the applicant; an affidavit and a letter from a letter from parents; a letter from physician; copies of medical records; letters of support; a letter from a teacher; a letter from the children's physician; copies of bills, tax records, and other financial documents; a copy of the U.S. Department of State's Background Note on Bangladesh and other background materials; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel concedes, that the applicant entered the United States using another person's passport and visitor's visa.¹ Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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

¹ To the extent counsel contends the applicant used fraudulent documents because he needed to escape persecution in Bangladesh, the AAO notes that the applicant does not contest that he is inadmissible. In addition, there is no suggestion in the record that the applicant made any attempt to timely retract his misrepresentation.

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.

In this case, the applicant’s wife, [REDACTED] states that she is a housewife and cares for her two young children who need her constant attention. She states her parents live in Detroit and have been living on government aid for the last two years. In addition, she states she had a miscarriage in the past which has created many physical complications for her, including back pain that does not let her stand for a long time or carry anything heavy, and headaches. She states she also has hyperthyroid problems. [REDACTED] contends her husband is a hard worker and without him, she will not be able to pay any of their bills. Furthermore, [REDACTED] claims their children cannot move to Bangladesh because there are so many problems in Bangladesh, including air and water pollution, poverty, food shortages, floods, and high unemployment. She also states that she has limited family ties in Bangladesh, that she is extremely close with her parents and siblings who live in Chicago and Detroit, and that their children would not receive the same level of education or health care as they would in the United States.

After a careful review of the record, there is insufficient evidence to show that the applicant’s wife, [REDACTED] will suffer extreme hardship if her husband’s waiver application were denied. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding [REDACTED] medical problems, the record contains copies of her medical records as well as a letter from her physician stating that she had a miscarriage in 2005 and that she has been having back pain, headaches, and hyperthyroid problems since her last pregnancy. According to the physician, “[s]he is not in a condition to do heavy work or full time job.” The physician states that [REDACTED] is on medications and requires therapy for back pain. Although the AAO is sympathetic to the family’s circumstances, and recognizes that the input of any medical professional is respected and valuable, the record does not provide sufficient details about [REDACTED] health conditions.

For instance, the letter from her physician does not address the prognosis, treatment, or severity of [REDACTED] conditions and no suggestion she requires her husband's assistance. The letter states that [REDACTED] requires therapy for her back pain, but neither [REDACTED] nor her physician contend she has ever undergone therapy for her back. In addition, the letter does not describe why [REDACTED] is physically incapable of working full-time and does not address whether she can work part-time. The AAO notes that the couple's children are currently five and ten years old. Although [REDACTED] contends they require her constant attention, a letter from the couple's son's teacher states that he is an "A" student, works hard, behaves well, and has good relationships with his peers and teachers. A letter from the children's pediatrician states that both of the couple's children are up to date with their immunizations and are in good health. Therefore, there is no suggestion in the record that the couple's children have any special needs. In sum, there is no evidence in the record to show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship the applicant's wife will experience amounts to extreme hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if she returned to Bangladesh, where she was born, to be with her husband. With respect to [REDACTED] health problems, as stated above, the record does not indicate that she is undergoing regular monitoring or treatment due to any health condition or that she could not be adequately treated in Bangladesh. Regarding conditions in Bangladesh, although the U.S. Department of State's Country Specific Information for Bangladesh recognizes that the air quality in Dhaka is extremely poor, that Bangladesh is at extreme risk for natural disasters, and that flooding is a common hazard, the record does not show that [REDACTED] readjustment to living in Bangladesh would be any more difficult than would normally be expected. Moreover, even assuming the couple's children would not receive the same level of education or health care in Bangladesh, the only qualifying relative in this case is the applicant's wife, [REDACTED]. The record does not show that any hardship the couple's children would experience amounts to extreme hardship for [REDACTED]. Even considering all of the evidence cumulatively, the record does not show that [REDACTED] hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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.

In proceedings for an 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.