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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**

[Redacted]

H5

Date: **AUG 31 2012** Office: PHILADELPHIA, PA FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:
[Redacted]

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, Philadelphia, Pennsylvania. 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 lawful permanent resident 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 June 24, 2010.

On appeal, counsel contends the applicant's wife's health has deteriorated as a result of the applicant's immigration problems and that denying the applicant's waiver application would place her life in grave danger.

The record contains, *inter alia*: an affidavit from the applicant's wife, [REDACTED] [REDACTED] physicians and copies of medical records; and articles addressing diabetes. 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 in his brief, that the applicant misrepresented himself to gain an immigration benefit. Specifically, the applicant misrepresented his work experience on his Application for Alien Employment Certification. 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 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 and her husband have been married since May of 1988. She states they have two children together and that she is pregnant with their third child. According to [REDACTED] she has developed gestational diabetes which has caused severe complications for her pregnancy. She contends her mother also suffered from diabetes. In addition, [REDACTED] states she is a housewife and relies on her husband in order to survive. She states that in her culture, the women stay at home to care for the children and it would be impossible for her to financially support her family if her husband departed the United States. Furthermore, [REDACTED] contends she could not go back to Bangladesh with her husband because Bangladesh pales in comparison to the United States with respect to medical care.

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 her medical condition, as counsel concedes in his brief, gestational diabetes is typically a temporary illness that occurs during pregnancy and the record shows that [REDACTED] was due to give birth to the couple's third child on May 1, 2010. Although counsel's contends that [REDACTED] is still suffering from the effects of gestational diabetes and is under constant medical care, there is insufficient information in the record to support this claim. The record contains a handwritten note, dated August 20, 2010, from a physician stating that [REDACTED] is suffering from diabetes mellitus and an illegible prescription. However, the physician's note does not address the prognosis or severity of [REDACTED] diabetes and there is no allegation she requires any assistance due to her condition. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. The AAO acknowledges that the record also contains a letter from a social worker which states that [REDACTED] is an insulin-dependent diabetic with high blood pressure who requires her husband's care. The social worker asserts that [REDACTED] needs four insulin injections daily, has problems walking because of poor circulation in her feet, and has leg pain for which she takes pain medication. The social worker also states that [REDACTED] has headaches and chest pain which may be somatic complaints related to her feeling distraught over her husband's possible deportation. However, the social worker's assertions regarding [REDACTED] diabetes are not based on any medical exam, but rather, are based on a single one-hour interview conducted with the applicant and his wife on July 22, 2010. Although the AAO recognizes that the input of any health professional is respected and valuable, the letter itself indicates that the social worker did not diagnose [REDACTED] with any medical or mental health

problem, including depression. *Letter from* [REDACTED] undated [REDACTED] is reportedly being evaluated for depression and may be prescribed psychotropic medication.”). Regarding [REDACTED] contention that she cannot work or financially support herself, there is no evidence to support this claim. Although the AAO is sympathetic to the family’s circumstances, there is no suggestion in the record 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. According to [REDACTED] April 19, 2010 affidavit, she has been in the United States for less than a year, does not speak English, and that her two daughters were born in Bangladesh. With respect to [REDACTED] diabetes, there is no evidence in the record showing that her condition cannot be adequately monitored and treated in Bangladesh. The social worker’s statements that insulin is unavailable in Ms. [REDACTED] village in Bangladesh is unsupported by any evidence. *Letter from* [REDACTED] *supra* (“According to [REDACTED] there is no insulin available in the remote village in Bangladesh where she came from.”). Although the U.S. Department of State’s Country Specific Information for Bangladesh recognizes that the general level of sanitation and health care in Bangladesh is far below U.S. standards, the record does not show that [REDACTED] readjustment to living in Bangladesh would be any more difficult than would normally be expected. 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 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.