

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]

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DATE: Office: WEST PALM BEACH, FL

FILE: [REDACTED]

DEC 08 2012

IN RE: Applicant: [REDACTED]

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:

[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,

f Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, West Palm Beach, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant does not dispute the finding of inadmissibility. The applicant's spouse and two children are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated April 13, 2011.

On appeal, counsel details hardship to the applicant's spouse if the waiver application is not approved. *Form I-290B*, received May 13, 2011.

The record includes, but is not limited to, counsel's brief, a psychological evaluation, country conditions information on Bangladesh, the applicant's statement, medical records, financial records and educational records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant presented a photo-substituted passport on February 27, 1988 when he attempted entry to the United States. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by willful misrepresentation of a material fact.

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

- (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 that:

- (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.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bars imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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.

Counsel states that: the applicant's spouse was in a serious car accident; she cannot drive a car due to the psychological trauma of the accident; she had surgery and recovered well; there is no evidence that this surgery was an isolated incident; she suffers from significant mental health issues; medical facilities in Bangladesh are not close to those in the United States and the applicant's spouse and children would face the loss of health care; they would face the loss of their personal safety, as crime levels in Bangladesh are higher than in the United States and there is documented violence and societal dangers there; the applicant's spouse has resided in the United States for 10 years now; the applicant's children are teenagers who were born and raised in the United States, they would have a tough time adjusting to life in a new country and are not able to read and write at a level to study there; and the stress endured by the children would cause additional stress on the their emotionally unstable mother.

The psychologist who evaluated the applicant's spouse states that she was in a serious car accident with her then young son and she sustained back and neck injuries; she sleeps poorly, due to her pain and tension; the applicant's daughter is a drum major in her school and is in an international baccalaureate program; his son likely has learning problems or attention deficit hyperactivity disorder; the applicant's children would face the loss of their home, friends, educational and economic futures; employment prospects for the applicant and his spouse would be limited in Bangladesh; and medical facilities would be limited in Bangladesh.

The record includes Department of State country specific information for Bangladesh, which reflects that government facilities for the mentally-disabled are largely inadequate and medical facilities do not approach U.S. standards. The applicant's spouse's medical records from 2001 indicate that she had cervical pain, a head injury and sprains/fractures/contusions. In 2010, she was diagnosed with symptomatic cholelithiasis. The record includes educational records for the applicant's children.

The record reflects that the applicant's spouse would have difficulty in Bangladesh based on hardship to her children, emotional difficulty and general country conditions. However, the record

does not include documentary evidence that she currently has medical issues related to her car accident or of the severity of her symptomatic cholelithiasis. The record is not clear as to the severity of her psychological issues should she relocate to Bangladesh. In addition, she is originally from Bangladesh. The AAO finds that the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship if she relocated to Bangladesh.

Counsel states that: the applicant's spouse would have to care for her two children alone; she is suffering from depression and anxiety; she lacks the emotional and psychological stability to handle the stress of raising two teenagers on her own; the applicant is the sole breadwinner of the family; the applicant and his spouse's children are teenagers who were born and raised in the United States; teenager years are some of the most critical years in the development of children; their children would likely struggle with many negative issues; and the applicant's spouse would suffer when their children suffer.

The psychologist who evaluated the applicant's spouse states that she has lost 15 pounds as a result of the pending hearing; the applicant's absence would be devastating; the applicant's spouse's severe psychiatric conditions would be exacerbated if the applicant is separated from the applicant; and she would be incapable of caring for the children without the applicant.

The psychologist diagnosed the applicant's spouse with Major Depressive Disorder, Recurrent and Dependent Personality Disorder, and his son with Major Depressive Disorder, Recurrent.

The applicant states that his spouse takes care of the house and the children; he runs the family business, which is the sole source of income and pays for their mortgage; and he drives the children to school due to his spouse's health problems.

The record reflects that the applicant's spouse owns a condo and she has a mortgage payment; and the applicant has a business lease.

The record includes Forms 1099-MISC for the applicant's spouse reflecting compensation of \$23,865.80 in 2007, \$28,048 in 2008 and \$9,309.55 in 2009, and a 2009 Form W-2 for the applicant reflecting wages of \$7,011.

The record is not clear as to whether the applicant is currently the sole financial provider for his family, although he does earn income. The record reflects that the applicant's spouse would have serious emotional and psychological issues due to separation from the applicant and she would be raising her two teenage children on her own. Considering the hardship factors mentioned, and the normal results of separation, the AAO finds that the applicant's spouse would suffer extreme hardship if they remained in the United States.

However, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States

and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case. 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.