

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



U.S. Citizenship
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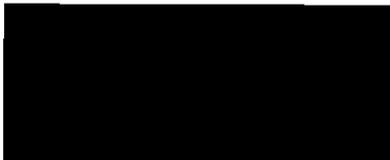
DEC 10 2012

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Miami, Florida (Royal Palm Beach) and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant is a native and citizen of Bangladesh who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. 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 lawful permanent resident spouse and mother.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility accordingly. See *Decision of the Field Office Director*, dated June 30, 2011.

On appeal, counsel asserts that the relevant favorable factors were not considered in the aggregate when determining whether extreme hardship exists to the applicant's two qualifying relatives and that the field office director's decision fails to explain in writing the specific reasons for the denial as required by 8 C.F.R. § 103.3(a)(1)(i). See *Form I-290B, Notice of Appeal or Motion*, received July 27, 2011.

The record contains, but is not limited to: Form I-290B, counsel's letter and earlier brief in support of a waiver; various immigration applications and petitions; a hardship affidavit from the applicant's spouse; an affidavit from the applicant; documents related to the July 2011 birth of the applicant's first child; medical records and psychological evaluations for the applicant's spouse and mother; tax, employment, and wage records; birth and marriage certificates; country conditions reports for Bangladesh; and records pertaining to the applicant's inadmissibility and removal proceedings. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

The record shows that the applicant fraudulently attempted to gain lawful permanent residence in the United States in the past using a false identity, and subsequently concealed and misrepresented this fact during immigration removal proceedings and a March 28, 2011 United States Citizenship and Immigration Services (USCIS) interview. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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

- (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 waiver of inadmissibility under section 212(i) of the Act is 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. Hardship to the applicant and his child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse and mother are the only qualifying relatives. 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-Moralez*, 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 record reflects that the applicant’s spouse is a 25-year-old native of Bangladesh and lawful permanent resident of the United States who has been married to the applicant since June 2009. They have one U.S. citizen child together, an infant daughter born on July 30, 2011. The applicant’s spouse indicates that she has never worked outside the home and has no skills, training or experience with which to secure employment sufficient to support herself, her infant daughter, and her elderly mother-in-law who resides with them, in the event of the applicant’s removal. She explains that since learning of the applicant’s inadmissibility she has grown more and more depressed and finds herself crying almost every day unable to imagine what she would do without him. [REDACTED] Ph.D., writes that the applicant’s spouse demonstrates a strong emotional dependency on and an emotionally dependent relationship with her husband. She diagnoses the applicant’s spouse with major depression and states that given her emotional state, impoverished coping skills, and limited independence it is likely that her symptoms will worsen if separated from the applicant or forced to relocate to Bangladesh. Dr. [REDACTED] concludes that the applicant’s spouse will likely suffer emotional hardship if the applicant is deported. The applicant’s spouse explains that she takes care of the applicant’s elderly mother who resides with them and who suffers a number of serious medical conditions, and expresses concern about being able to continue to do so in the applicant’s absence.

The record shows that the applicant's mother is a 79-year-old native of Bangladesh and lawful permanent resident of the United States who has resided continuously with the applicant since October 1991 and in whose care she has been since the death of his father in February 1999. [REDACTED] MD-PA states that the applicant's mother has been her patient since 2007 and is being treated for Diabetes Mellitus complicated with Diabetic Neuropathy, Arterial Hypertension, Chronic Neck Pain, Low Back Pain and Hematuria and is currently taking a number of prescription medications. Dr. [REDACTED] relays that the applicant's mother has suffered from depression since the death of her husband and is afflicted with multiple medical conditions and admitted to an overall decline in her general functioning. Dr. [REDACTED] writes that the applicant's mother displays an emotional dependency upon her son and relies upon him for many of her needs. She states that the applicant's mother suffers from a profoundly depressed mood, preoccupation with her life circumstances, somatic complaints, and feelings of helplessness and hopelessness related to her son's inadmissibility. Dr. [REDACTED] diagnoses the applicant's mother with major depressive disorder, recurrent and concludes that given her fragile health and emotional state and her pronounced dependency on the applicant it is likely that her symptoms will worsen if separated from him and she will likely suffer emotional hardship if he is deported.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse and mother including the extremely advanced age of the latter and her fragile physical health and numerous serious and chronic medical conditions, her fragile emotional and psychological health including major depression, that she has resided with the applicant in his home for more than 20 years and is dependent upon him emotionally, physically and financially, that the applicant's spouse too is dependent economically upon the applicant, having never worked outside the home and lacking the training, skills or experience to secure employment sufficient to support herself, her infant daughter and the applicant's mother who lives with her, and her significant emotional/psychological conditions. The AAO finds that considered in the aggregate, the evidence is sufficient to demonstrate that the applicant's lawful permanent resident spouse and mother would suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant's spouse explains that she does not wish to lose the lawful permanent resident status she has enjoyed since May 2007. She expresses great fear of having her infant daughter grow up in a country where the water is dirty, the government is unstable and corrupt, girls have little chance to study or have a career, and where there is no hope, no rights for women and no future. Country conditions reports submitted for the record confirm that Bangladesh is one of the world's poorest and most densely populated countries, that medical facilities do not approach United States standards even in tourist areas, that multiple strains of influenza continue to circulate in the country including H1N1 influenza A pandemic strain, that dengue fever is prevalent in Dhaka and surrounding areas and that there have been multiple outbreaks of anthrax in rural communities. Counsel contends that such conditions establish an extraordinary hardship to the applicant's spouse, infant child, and elderly and ailing mother. Counsel additionally notes that the applicant's elderly mother has resided in the United States for more than 20 years and has extremely close family ties herein where all of her children and grandchildren reside and her deceased husband of many years is buried. Conversely, she has no family, friends, property, or connection any longer to Bangladesh.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse and mother including adjustment to a country in which neither has resided in many years, particularly the applicant's mother who at the advanced age of 79-years-old has no remaining ties to Bangladesh which she left more than 20 years ago and has extremely close family ties to the United States where all of her children and grandchildren reside and where her husband of many years is buried; the fragile physical/medical condition of the applicant's mother who suffers from a number of serious and chronic ailments; the fragile emotional/psychological condition of both the applicant's mother and spouse and that standards of healthcare and medical facilities in Bangladesh are far below those in the United States; that both qualifying relatives may lose their lawful permanent resident status as a result of relocation; and stated health, safety, education, employment and economic concerns regarding Bangladesh. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's lawful permanent resident spouse and mother would suffer extreme hardship were they to relocate to Bangladesh to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. See, e.g., *Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)

Id. at 301.

The favorable factors in the present case include extreme hardship to the applicant's lawful permanent resident spouse and mother as a result of the applicant's inadmissibility; his longtime emotional and financial support of these qualifying relatives; his apparent lack of any criminal record and his consistent payment of taxes. The unfavorable factors are the applicant's immigration violations which include his use of a false identity in an attempt to gain lawful permanent residence in the United States and his subsequent concealment and misrepresentation of this fact during immigration removal proceedings and a USCIS interview, and his periods of unauthorized employment in the United States. Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, pursuant to section 212(i) of the Act, the AAO finds that a favorable exercise of discretion is warranted

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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 application approved.

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