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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 and Immigration Services**



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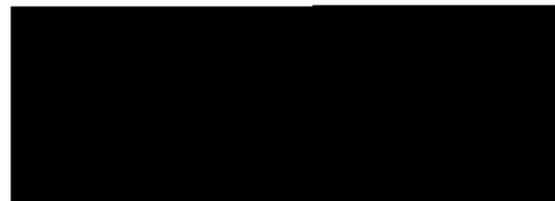
IN RE:

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)

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, New Delhi, India, and 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 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 fraud or 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 reside in the United States with her U.S. citizen spouse and children.

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 (Form I-601) accordingly. See *Decision of the Field Office Director*, dated January 14, 2010.

On appeal counsel asserts that medical evidence was not considered and the applicant's spouse will suffer hardships if the applicant's waiver is not granted. See *Form I-290*, Notice of Appeal or Motion, received February 18, 2010.

The record contains, but is not limited to: Form I-290B and counsel's brief; various immigration applications and petitions; affidavits, statements and letters; medical records and social worker's report; Bangladesh-related printouts; wire transfer receipts; marriage, divorce and birth records; records pertaining to DNA test results; applicant's inadmissibility and removal records. 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 reflects that on March 15, 2001 the applicant sought to procure admission into the United States by presenting a passport bearing an identity not her own. She disclosed her actual identity during secondary. The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i) but was paroled into the United States pending the outcome of her immigration court hearing. 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.<sup>1</sup>

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<sup>1</sup> The Field Office Director found that the applicant is further inadmissible under 212(a)(6)(C)(i) of the Act for additional acts of fraud/misrepresentation. As the AAO has already determined that the applicant is subject to section 212(a)(6)(C)(i) of the Act, for seeking to procure entry to the United States by presenting

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 or applicant's children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is her only 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-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,

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a fraudulent passport, as noted in detail above, and requires a waiver of inadmissibility under section 212(i) of the Act for her misrepresentation with respect to attempting to procure admission to the United States with a fraudulent passport as outlined in detail above, it is not necessary to evaluate whether the other incidents referenced by the Field Office Director also amount to misrepresentation under section 212(a)(6)(C)(i) of the Act.

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 51-year-old native of Bangladesh and citizen of the United States. He and the applicant have lived apart since she departed in January 2004 with their two children to Bangladesh where she gave birth to their third child in January 2008. The applicant’s spouse contends that he will experience severe financial problems if the applicant remains in Bangladesh and will not be able to afford rent, loans, utilities and traveling expenses between the two countries. He asserts that he sends money to Bangladesh to help support his wife and children, must work two jobs now and is almost losing his business. The documentary evidence in the record is insufficient to establish that the applicant’s spouse is experiencing economic hardship that, when considered in the aggregate, rises to the level of extreme.

The applicant's spouse further states that he has a number of medical conditions including shortness of breath due to emphysema, elevation of the right hemidiaphragm, and blunting of the right CP angle. He indicates that he also had eye surgery for which he requires follow up visits. Medical records show that the applicant has periodic chest x-rays to monitor emphysema-related anomalies and [REDACTED] maintains that the applicant's spouse suffers shortness of breath due to emphysema and blurring of vision due to eye surgery. [REDACTED] contends that the applicant should be allowed to come to the United States to take care of her husband. While the AAO recognizes that the applicant's spouse is not in perfect health, the evidence is insufficient to establish the severity of his conditions or what assistance the applicant could provide.

The applicant's spouse maintains that he is emotionally/physically dependent on the applicant to whom he is exceptionally close, and he will be constantly depressed because of the possibility of losing the closeness he shares with her. [REDACTED], contends that "based on the information given," the applicant's spouse and his family "have been severely emotional traumatized as a result of being separated from each other." [REDACTED] asserts that this psychological distress has been compounded by the concerns the applicant's spouse has for his wife and children "due the depraved conditions they are faced with in Bangladesh." [REDACTED] recommends, since it would not be prudent for the applicant's spouse to join his family in Bangladesh that the applicant be granted permission to return to the U.S. The AAO has considered in the aggregate all assertions of separation-related hardship to the applicant's spouse including his emotional, medical/health-related, physical and economic concerns and difficulties.

The AAO acknowledges that separation from the applicant has and may cause various difficulties for the applicant's spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal or inadmissibility of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that he is very close to his elderly mother and his brother in the United States and that his mother relies heavily on him. He explains that he helps her with doctor's appointments, grocery shopping, and in ways too many to enumerate. His mother asserts that she has lived with the applicant's spouse since becoming a permanent resident in 1995. She maintains that she suffers from high blood pressure, uncontrolled diabetes and heart disease and the applicant's spouse takes her regularly to the doctor, cooks food for her when she is sick, and that his hardship and agony deteriorates her physical and mental condition. The record contains no documentary evidence concerning the health of the applicant's mother. [REDACTED] asserts that when the applicant's spouse travels to Bangladesh for months at a time, he takes his mother with him because she is unable to live alone. The applicant's spouse contends that moving to Bangladesh would cause him enormous psychological and emotional stress because it would mean permanent separation from his family in the U.S. The applicant's spouse does not address the possibility of his mother joining him should he relocate to Bangladesh.

The applicant's spouse further asserts that his conditions will go untreated in Bangladesh and it will be impossible for him to get necessary medical help. A BBC internet article from February 2000 is submitted in support. The record contains no more recent documentary evidence

addressing healthcare in Bangladesh. The applicant's spouse states that the economy in Bangladesh is very bad, he will not be able to work and provide for his family, will have no health coverage, and will not be able to pay for his medications and treatment.

The applicant's spouse asserts that his and his U.S. citizen children's lives will be in danger in Bangladesh where Americans have experienced problems in the past. He states that just the idea of living there constitutes extreme hardship and he fears terrorism and feels threatened every time he goes. In support is submitted a Warden Message stating that on March 5, 2008, [REDACTED] was designated a Foreign Terrorist Organization by the U.S., the group has been implicated in a number of terrorist attacks in Bangladesh and abroad, and that in February 1998 its leader signed a fatwa sponsored by [REDACTED] declaring American civilians legitimate targets for attack. The applicant's spouse also expresses concern about natural disasters in Bangladesh and the government's lack of response thereto in the past.

Assertions have also been made concerning hardship to the applicant's children. The applicant's spouse states that he extremely misses his three young children in Bangladesh who are growing without a father, experiencing sadness and are very concerned about how difficult things are for them financially. He claims there are no good schools, food or good environment in Bangladesh and that his children are "suffering too much." The applicant's spouse contends that if he relocates to Bangladesh, his children would be denied the good U.S. life, would have to work instead of studying, could not attend the college of their choice, and their education would be greatly compromised.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including relocation to a country in which he has not resided for many years; close family ties to his brother and elderly mother in the United States; his business and other employment in the U.S.; his medical condition, existing relationship with U.S. physicians, likely loss of health insurance, medical/health-related concerns regarding Bangladesh; and asserted economic, educational, emotional, physical, natural disaster and safety-related concerns therein. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to Bangladesh to be with the applicant.

Although the applicant has demonstrated that her qualifying relative spouse would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not

demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.