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



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

715

DATE: SEP 06 2012

Office: PHILADELPHIA, PA

FILE: [REDACTED]

IN RE: [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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Philadelphia, Pennsylvania 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She 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 spouse and daughter.

The acting director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of the Acting Field Office Director*, dated [REDACTED] 2010.

On appeal, counsel asserts that the acting director used a higher standard of review to deny the waiver application, and she abused her discretion by failing to properly weigh positive factors in determining whether the applicant's qualifying relative would experience hardship. Counsel asserts that the record contains evidence showing extreme hardship to the applicant's spouse and daughter. *See Counsel's attachment to Form I-290B, Notice of Appeal or Motion*, received on October 20, 2010. The AAO notes that counsel states that he would file a written brief within 90 days of the appeal; however, as of the date of this decision, the AAO has not received counsel's brief. The record, therefore, is considered complete.

The evidence of record includes, but is not limited to: statements from the applicant's spouse, medical documents concerning the applicant, identification and relationship documents, and financial documents. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

The record reflects that the applicant entered the United States on [REDACTED] 1994 with a B2 nonimmigrant visa, which she obtained with an assumed name, [REDACTED] and a different date of birth. She has not left the United States since her entry in 1994. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for having procured admission to the United States through fraud or misrepresentation. Counsel does not contest the applicant's inadmissibility.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

The record contains references to hardship the applicant's adult child would experience if the waiver application were denied. It is noted that Congress did not include hardships to an alien's children as factors to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardships to the applicant's adult child will not be separately considered, except as they may affect the applicant's spouse.

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 AAO now turns to the question of whether the applicant in the present case has established that her qualifying relatives would experience extreme hardship as a result of her inadmissibility.

The applicant’s spouse states that the entire family would experience “severe hardship” if the applicant is deported. He states that in accordance with their traditions, he depends on the applicant for his care, cooking, cleaning, and other needs; he has diabetes and needs the applicant’s assistance in bathing, dressing, and walking. He states that without the applicant’s help, he would not be able to care for himself. Medical evidence indicates that the applicant’s spouse is treated for diabetes and high cholesterol. Diagnostic test results show that he has enlarged liver with a possible atrophy of his pancreas. He also has a renal cyst. The applicant’s spouse also states that he and the applicant are unable to sleep, thinking about their future should

the applicant be deported. They have "panic attacks and psychiatric conditions" because of the applicant's immigration situation. According to the applicant's spouse, it was "very difficult" for him to visit the applicant often when she lived in Bangladesh.

The applicant's spouse states that relocating with the applicant also would be extreme hardship for him. He states that he would not be able to receive the medical care he needs. He states that living in Bangladesh would be difficult also for the applicant, who now is used to the American lifestyle, and Bangladeshi society has become more conservative. He is also concerned that the applicant would be unable to find employment, may be subjected to arsenic poisoning, and would develop health problems in Bangladesh. He also indicates that the applicant feared for her safety after being threatened for her political associations before her arrival in 1994, and she now lives without fear.

The applicant's spouse is an independent contractor and his income in 2009 was \$21,229. A bank letter indicates their checking and savings accounts with low average balances.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to her spouse should he remain in the United States if the applicant returns to Bangladesh. Although the applicant submitted a bank statement and their 2009 income tax return, she made no claims that her spouse would experience financial hardship as a result of her absence. Moreover, the applicant's spouse states that it was difficult for him to visit the applicant often when she was in Bangladesh, but he provides no details describing the difficulties he experienced. Without clear assertions of hardship and corroborating evidence, the AAO cannot conclude that the applicant's spouse would experience financial hardship.

Regarding the emotional hardship of the applicant's spouse, the AAO acknowledges that he and the applicant have a loving relationship and that he would experience hardship resulting from his separation from the applicant; however, we note such hardship is a common result of deportation or exclusion and is insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). The record does not contain psychological evaluations or other objective reports supporting the applicant's spouse's claims of psychological or emotional problems. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, although the record indicates that the applicant's spouse is being treated for medical conditions, the applicant did not provide documentary evidence detailing his limitations and corroborating the type of assistance he needs for his daily care.

The record contains no evidence supporting counsel's assertion of extreme hardship for the applicant's adult daughter, and no evidence shows the effects of her hardship on the applicant's spouse, the only qualifying relative in the instant case. Absent supporting documentation, counsel's assertion is insufficient proof of hardship. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the AAO concludes, considering the evidence in the aggregate, the hardship the applicant's spouse would experience, should they separate, would not rise to the level of extreme.

The AAO finds that the applicant has also failed to demonstrate that her spouse would experience extreme hardship if he relocates to Bangladesh. We note that the applicant's spouse is a native of Bangladesh and speaks the language. Furthermore, the record does not establish that the applicant or her spouse would be unable to find gainful employment in Bangladesh. Although the applicant's spouse claims that he would not be able to receive the medical care he needs, the record contains no evidence corroborating his assertion. Similarly, the record lacks evidence demonstrating that the applicant would develop health issues should she relocate. Moreover, though the applicant's spouse refers to political problems the applicant experienced before she left Bangladesh in 1994, the record includes no information that would support concluding that she and her family would face similar threats there now. Therefore, the AAO concludes, considering the evidence in the aggregate, the hardship the applicant's spouse would experience, should he relocate, would not rise to the level of extreme.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she 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. 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.