



(b)(6)

DATE: **APR 03 2013** OFFICE: NEW DELHI, INDIA

File: [REDACTED]

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:

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,

Ron Rosenberg
Acting 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 record reflects 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 having attempted to procure a visa to the United States through willful misrepresentation. The applicant is the son of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his mother in the United States.

The Field Office Director concluded the applicant failed to establish 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 July 18, 2012.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) erred as a matter of law and fact in concluding the applicant failed to establish his mother would suffer extreme hardship because of his inadmissibility as the record includes substantial evidence of his mother's medical conditions, her inability to receive comparable care in Bangladesh, and his older brother's financial support of him and their mother. Notice of Appeal or Motion (Form I-290B), dated August 6, 2012.

The record includes, but is not limited to: briefs and correspondence from current and previous counsel; letters of support; identity, psychological, medical, and financial documents; and documents on conditions in Bangladesh. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) 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.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects the applicant's lawful permanent resident mother submitted a Petition for Alien Relative (Form I-130), indicating an incorrect date of birth so that the applicant could qualify for immigration benefits as her beneficiary-child. The record also reflects the applicant did not correct

the date of birth during his immigrant visa interview.¹ Accordingly, the Field Office Director found the applicant inadmissible for utilizing three different dates of birth² and presenting false documents in an attempt to obtain a visa as the child of a lawful permanent resident.³ The record supports the findings, and the AAO concurs the misrepresentations were material. The AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i) 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 [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.

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. Hardship to the applicant, his siblings, or his sister-in-law can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parent is the only demonstrated qualifying relative in this case. 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 of Immigration Appeals (BIA) 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

¹ The AAO notes the applicant indicated another incorrect date of birth on his Application for Immigrant Visa and Alien Registration (DS-230) form.

² The Field Office Director identified the three dates of birth as: December 21, 1987; December 21, 1988; and July 12, 1979, and indicated the applicant claims that his true date of birth is July 12, 1979.

³ The Field Office Director also indicates the applicant failed to admit to his material misrepresentation on his Form I-601, and instead, notated on the form: "The U.S. embassy discovered my incorrect date of birth."

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 BIA 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 BIA 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 Id.* at 568; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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 contends the applicant's mother would suffer extreme medical, mental, and financial hardship in the applicant's absence as: she has sought and continues to seek regular examinations and treatments for her various ailments, which include an eye condition that will likely deteriorate

rather than improve; she will be on medications for the foreseeable future; her mental health has deteriorated significantly, which is rooted in her inability to see the applicant and his sibling, and is exacerbating her medical conditions; she was able to maintain connection with the applicant and his brother by undertaking regular trips to visit them until her physical and emotional conditions deteriorated; her eldest son, whose income has declined the past two years, financially supports her, his wife and children, and he uses some of his income to support the applicant; she is solely dependent on his financial support as she is unable to seek gainful employment and to support herself given her physical and mental health conditions; his financial obligations include a residential rent of \$750/month, and he is unable to maintain two households; the applicant could seek gainful employment in the United States to help support her, and in the alternative, provide her with care so that his sister-in-law could seek gainful employment; and the applicant was forced to close a previously-owned business as fees went unpaid. The applicant's mother also indicates: she is a frail woman who needs constant, daily, medical and physical help; she is distraught over her poor health and the possibility of permanent separation from the applicant and her other son; her daughter-in-law is unable to work as she is dependent on her daughter-in-law for her care; her eldest son must take off some days from work to assist her with medical emergencies or appointments; she feels like an obstacle to her son and his family, but she cannot envision herself living in a senior center as she cannot think of living apart from her loved ones; her sons are facing uncertain futures in Bangladesh as they do not have employment opportunities and are working on their family lands; "hardcore" Islamists have harassed her family for a long time, demanding an "infidel tax" and threatening the applicant and his brother with violence and expulsion from their home; and her family's pain and suffering would be alleviated if the applicant and his brother were permitted to come to the United States to pursue a life with opportunity and without fear and intimidation. The applicant further indicates: he and his brother often speak with their mother on the phone, and often they end-up crying as they miss one another; it is his duty to take care of his elderly mother; his eldest brother is in need of a second wage-earner in their family; he is financially dependent on his brother; fundamentalist Muslims harass and threaten him, and local community members demand financial favors and parcels of their family lands, and they refuse to repay monies they have borrowed; local, influential Muslims scare away potential customers who are interested in buying his family's real estate properties, and they also are in illegal possession of much of his family's properties; and he and his brother must sleep away from their home as they are verbally abused and receive threats of physical violence when they attempt to recover money owed to them. Additionally, the applicant's eldest brother indicates: he is the sole financial provider for his family, including his mother, the applicant, and younger sibling; his brothers are unable to work in Bangladesh given its political "nonsense"; it is hard to do anything as Hindus are a minority in the Muslim-dominated society; his family would be "better off" with three providers; their mother would be at ease as her family would be together, and his family only desires to live with each and to be together; and he does not want their mother to pass away without being with her entire family.

Although the applicant's mother may be experiencing hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is sufficient to establish the applicant's mother is currently being treated for various medical conditions, which include diabetes mellitus and cataracts, resulting in blindness in her right eye, cataract extractions, and an implant in her left eye.

See Medical Letter Issued by Dr. [REDACTED] M.D., dated September 21, 2012; see also Medical Letter Issued by Dr. [REDACTED] M.D., dated September 21, 2012; Medical Letter Issued By Dr. [REDACTED] M.D., dated June 2, 2011. However, the AAO notes the applicant's mother's conditions appear to be controlled by prescriptive medications and medical procedures, and Drs. [REDACTED] letters do not include any indication the applicant's presence would be advantageous in her treatment. Additionally, the record is sufficient to establish [REDACTED] LCSW-R, diagnosed the applicant's mother with Major Depressive Disorder. However, the AAO notes Ms. [REDACTED] evaluation does not include any discussion of any ongoing treatment or any indication the applicant's presence would be advantageous in such treatment. Absent an explanation in plain language from the treating physicians and mental health professional of the nature and severity of any conditions and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed.

Further, the record is sufficient to establish the applicant's eldest brother is the applicant's mother's primary breadwinner, and he has submitted remittances to the applicant. However, the AAO finds the record does not include sufficient evidence of his current financial obligations or his inability to meet those obligations in the applicant's absence. Moreover, the AAO notes the most recent remittance in the record is dated June 7, 2006, approximately six years prior to the submission of the applicant's appeal. Further, the AAO notes the record does not include any evidence of the applicant's business in Bangladesh other than what has been self-reported. The AAO cannot conclude the record establishes the applicant's mother's financial hardship would go beyond the normal consequences of inadmissibility.⁴

The AAO notes the concerns regarding the applicant's mother's hardship, but finds even when this hardship is considered in the aggregate, the record fails to establish she would suffer extreme hardship as a result of separation from the applicant.

Counsel contends the applicant's mother would suffer extreme hardship upon relocating to Bangladesh to be with the applicant as: she would be separated from her family in the United States; her medical conditions would be exacerbated given the lower sanitation and healthcare standards; she fears for her personal safety given the widespread violence against Hindus; the applicant's inability to financially provide for her; and the risk of natural disaster there. The applicant's mother also indicates extremist Muslims have subjected her to harassment and demands for money when she has traveled to Bangladesh.

⁴ The AAO notes the record includes a letter of support from Ms. [REDACTED] indicating she is the applicant's mother's granddaughter and the eldest son's niece, and that the applicant's mother and eldest brother have been living at their residence since 2006 and pay a monthly rent of \$750. See *Letter of Support*, dated May 5, 2012. However, the AAO also notes that additional evidence in the record indicates Ms. [REDACTED] is the applicant's eldest brother's ex-wife as of 2006. It is unclear whether Ms. [REDACTED] and Ms. [REDACTED] is the same individual.

The record is sufficient to establish the applicant's mother would suffer hardship if she were to relocate to Bangladesh. The record reflects she maintains lawful permanent residence in the United States, where she maintains close familial ties and continues to receive medical treatment for her physical conditions. Although the record reflects she maintains some familial and real property ties in Bangladesh, the U.S. Department of State's current travel advisory for Bangladesh states: "The general standards of sanitation and health care in Bangladesh are far below U.S. and European standards. There is limited ambulance service in Bangladesh and attendants seldom are trained to provide the level of care seen in the United States ... most expatriates leave the country for all but the simplest medical procedures ... Medical evacuations to Bangkok or Singapore are often necessary for serious conditions or surgical procedures and can cost thousands of dollars ..." *Travel Advisory, Bangladesh*, issued January 18, 2013. Accordingly, the AAO finds, in the aggregate, the applicant's mother would suffer extreme hardship upon relocation to Bangladesh.

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 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. In re Pilch*, 21 I&N Dec. at 632-33. 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 this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his lawful permanent resident parent as required under section 212(i) of the Act. 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.

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.