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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]

Date: **FEB 14 2013** Office: NEW DELHI 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:
[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,

for 
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India. 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 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 attempting to procure admission to the United States through fraud or misrepresentation. The record shows that the applicant attempted to enter the United States in 1987 using a passport in the name of another person. The applicant does not contest the finding, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with his lawful permanent resident spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative spouse would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated April 27, 2012.

On appeal counsel for the applicant contends the decision was erroneous in finding that the applicant's spouse does not have serious health, financial or emotional hardship. With the appeal counsel submits an affidavit from the applicant's spouse; medical documentation about the spouse; country information for Bangladesh; and school information for the applicant's daughter. The record also contains previously-submitted statements from the applicant and his spouse and financial documentation. 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) 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:

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. The applicant's wife is the only qualifying relative in this case. 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

speaking 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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) (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.

In her affidavit the applicant's spouse states her health prevents her from living in Bangladesh. She states she had a near fatal automobile accident that caused life-threatening injuries leaving her no longer able to care for herself. She states she suffers from chronic diseases, including back pain and anemia that require regular care and physical therapy. She states that without the applicant her quality of life would radically decline as she is unable to leave the house without assistance due to her lack of mobility. The applicant's spouse states that the thought of separation from the applicant is psychologically and emotionally traumatizing, and that her rehabilitation and medication coupled with psychological counseling are marginally successful but sometimes leave her in pain, even suicidal. She states her psychiatrist is concerned that she will have a nervous breakdown or major anxiety based trauma. She further states that they are a close knit family and the applicant's absence is taking a toll, and that as their youngest daughter is flourishing in school, she would leave her daughter in the United States if she were to join the applicant in Bangladesh, where she fears the daughter would be a kidnapping target because she would be perceived as an American. The spouse states that her brother is helping financially, but he must also care for their mother who has serious health issues. The applicant's spouse further states she is unable to function independently because of chronic health issues, so she cannot care for herself without the applicant's financial assistance for the ongoing treatments and rehabilitation she needs.

In his affidavit the applicant states he is unable to support his spouse and family in the United States as he is unemployed, having sold his business to pay for their travel costs, and his family receives state benefits for their daily livelihood. He also states that his spouse does not work and is also not able to drive the children to school, so his presence in the United State would better their situation.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant's spouse stated that she suffers chronic illnesses and injuries from a near-fatal auto accident, but provided no documentation of an auto accident or resulting injuries. The submitted medical documentation does not support her contention that she has severe health problems requiring ongoing treatment and rehabilitation or that she is unable to function physically without assistance. Counsel submitted a Patient Plan for the applicant's spouse which states only that she should exercise and diet, and indicates that she did not go to scheduled physical therapy sessions. A letter from a medical doctor states the spouse reports chronic back and neck pain, but that the spouse did not attend therapy. The record also contains appointment notices, but no subsequent information. The record contains no documentation explaining the nature, severity or prognosis of the spouse's medical condition or how

any treatment plan requires the applicant's presence. Medical documentation notes that the applicant's spouse is under pressure to return home but does not want to leave the United States, and contains a notation stating "refer to counseling". The spouse states that her psychologist expressed concerns, but the record contains no evidence of counseling sessions or an evaluation from a psychologist. 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)).

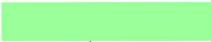
Counsel, the applicant, and his spouse assert that the spouse suffers financially without the applicant's contribution and the spouse claims her brother has difficulty supporting her and the children. The record contains a one-month rent receipt, a utility disconnection notice, a pay statement for the applicant's son, and a copy of a New York State Benefit identification card, but no information from the applicant's brother. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The applicant's spouse states that her health condition prevents her from living in Bangladesh with the applicant, but the medical documentation submitted to the record does not support her contention as it does not establish the severity of her medical condition. She stated that medicine in the United States is among the best in the world, and counsel submitted country information indicating inequities in access to medical services is based on socioeconomic status and demographics, such as geographical location and gender, but provided nothing specific concerning where she would reside. Further, the applicant's spouse, a native of Bangladesh, only recently immigrated to the United States at about 46 years old, suggesting that she has not been absent the country so long as to create difficulty readjusting and hardship upon return.

The record contains references to hardship the applicant's youngest child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section (212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse. Here, the applicant's spouse has other family members and older children in United States, so her youngest child returning with her to join the applicant in Bangladesh would be a matter of choice.

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.

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. The AAO therefore finds that the applicant has



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failed to establish extreme hardship to his qualifying spouse 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.