



U.S. Citizenship
and Immigration
Services

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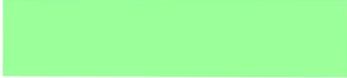


Date: **JAN 14 2013**

Office: NEW DELHI, INDIA

FILE: 

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:

SELF-REPRESENTED

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 that 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 willfully misrepresenting a material fact in order to seek admission into the United States. The record indicates that the applicant is married to a U.S. citizen and is the mother of a U.S. citizen adult son and three Bangladeshi citizen adult children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 her spouse and son.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 18, 2012.

On appeal, the applicant claims that her husband suffers from various medical conditions and is suffering extreme hardship. *Form I-290B, Notice of Appeal or Motion*, dated February 12, 2012.

The record includes, but is not limited to, statements from the applicant and her husband, medical and psychological documents for the applicant's husband, and country-conditions documents about Bangladesh. The entire record was reviewed and considered in arriving at a 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.

.....

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

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

- (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 immigrant 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 her son can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 of Immigration Appeals (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 v. INS*, 138 F.3d 1292, 1293 (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.

The record contains references to hardship the applicant's son would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor 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 hardship to the applicant's son will not be separately considered, except as it may affect the applicant's spouse.

In the present case, the record indicates that on September 15, 1997, December 30, 1998, and January 26, 2000, while applying for nonimmigrant visas, the applicant misrepresented her family ties to the United States. Specifically, she failed to state that her spouse resided in the United States. Additionally, she failed to list her pending immigrant visa petitions.

In her statement filed March 19, 2012, the applicant claims that she did not willfully conceal information when applying for her nonimmigrant visa. She states that with each visa application, she copied the information from the previous application. Additionally, she claims that someone helped her fill out the nonimmigrant visa applications.

With respect to the willfulness of the applicant's misrepresentation, the Department of State Foreign Affairs Manual, Volume 9 § 40.63 N5, in pertinent part states that, "[t]he term 'willfully' as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise." The AAO finds the applicant's claim that she is not inadmissible to the United States through the misrepresentation of a material fact because she was unaware of the information that was in her nonimmigrant visa application to be unpersuasive. The AAO observes that in waiver proceedings, the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. Although the applicant claims someone helped her fill out the applications and the information was copied from previous applications, she does not dispute that she signed and filed the applications. Additionally, she was married to her husband and he had filed an immigrant visa petition for her before she filed her first nonimmigrant visa application. Further, the applicant's husband became a U.S. citizen by the time she filed her second nonimmigrant visa application. Because the applicant submitted the nonimmigrant visa applications and it is her responsibility to understand the documents that she signs and files for immigration benefits, the AAO finds that the applicant has not met her burden of proving she is not inadmissible. Accordingly, the AAO finds that the applicant is

inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

Concerning the hardship the applicant's husband would experience if he were to relocate, in his undated declaration the applicant's husband states all of his family resides in the United States. In a psychological evaluation dated October 23, 2009, Dr. [REDACTED] reports that according to the applicant's husband, the applicant is not working and stays home all the time because of the dangerous country conditions. She also reports that the applicant's husband believes it would be dangerous for him to return to Bangladesh because of his political affiliation with the Freedom Movement. The applicant's husband states the country conditions in Bangladesh are "very serious and dangerous," and friends involved in his political movement were killed. In its Bangladesh country-specific information report dated January 4, 2013, the U.S. Department of State states, "The security situation in Bangladesh is fluid, and [U.S. citizens] are urged to exercise caution at all times." The country-conditions documents about Bangladesh in the record lack information on the Freedom Movement. Additionally, no documentary evidence was submitted establishing that the applicant's husband was a member of the Freedom Movement and that based on his political affiliation he will suffer if he returns to Bangladesh. Moreover, it appears from the record that the applicant's husband has traveled to Bangladesh without incident.

The AAO acknowledges that the applicant's husband is a U.S. citizen, and that relocation abroad would involve some hardship. However, the applicant's husband is a native of Bangladesh, and it has not been established that he cannot communicate or that he is unfamiliar with the customs and cultures of Bangladesh. Additionally, the record does not contain documentary evidence showing that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). Further, though the applicant's husband's security concerns about Bangladesh are corroborated generally by a U.S. government report, without more his concerns do not support a finding of hardship should he join the applicant in Bangladesh. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Bangladesh.

Concerning the applicant's husband's hardship in the United States, the applicant's husband states the separation from the applicant has been difficult, he is depressed, and he had to "seek professional psychological help." Dr. [REDACTED] diagnoses the applicant's husband with posttraumatic stress disorder, and personality disorder. The applicant's husband states his mental health is affecting his work because he cannot concentrate. Dr. [REDACTED] reports that the applicant's husband worries about the applicant because of his safety concerns in Bangladesh. Additionally, she reports that the applicant's husband has suffered social discrimination in his community, because the applicant does not live with him. Dr. [REDACTED] also indicates that the applicant's son is "experiencing significant distress" and diagnoses him with adjustment disorder.

The applicant's husband also claims that he is "very sick"; he was "diagnosed with diabetes, high blood pressure, high uric acid and prescribed several medications;" and placed on a special diet. Medical documentation from facilities in both the United States and Bangladesh establish that the applicant's husband

has been prescribed medications and was referred to a dietician. Dr. [REDACTED] indicates that the applicant's husband is Muslim and requires his foods to be specially prepared, but he does not know how to prepare foods as required. The applicant states she needs to care for her husband. Additionally, in a statement dated November 6, 2004, Dr. [REDACTED], a doctor in Bangladesh, diagnosed the applicant's husband with arthritis due to gout and hypertension; however, he was prescribed medication and his condition improved.

The AAO acknowledges that the applicant's husband may be suffering emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover, the applicant's son is not a qualifying relative under the Act, and the applicant has not shown that hardship to her son has elevated her husband's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

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 failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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. *See* 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.