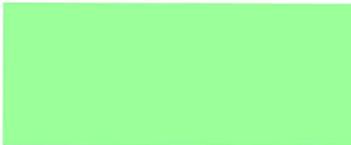




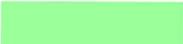
**U.S. Citizenship
and Immigration
Services**

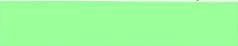
(b)(6)



DATE: **MAR 14 2013**

Office: NEW DELHI

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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 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 attempted to procure admission to the United States through fraud or misrepresentation of a material fact. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his lawful permanent resident mother.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his mother and denied the application accordingly. *See Decision of Field Office Director*, dated May 2, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director failed to consider the applicant's mother's close family ties in the United States, her health problems, and her concern over the applicant's health and safety in Bangladesh. *Counsel's Brief*. Additionally, the applicant claims in his affidavit that he did not misrepresent any information in his visa application.

The record includes, but is not limited to: statements from the applicant and his mother; a letter from the applicant's mother's doctor; a psychological evaluation; country conditions information; and copies of the applicant's birth certificate. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, he bears the burden of demonstrating by a preponderance of the evidence that he is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

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.

In the present case, the record reflects that the applicant appeared before a consular officer on December 23, 2003 to apply for a V visa. In his application, he indicated that his date of birth is [REDACTED] and provided falsified school records to corroborate his age. On appeal, the

applicant claims that he did not misrepresent his age to the consular officer and that DNA tests were conducted which showed his age to be consistent with the information he had provided. The applicant also claims that his school records were not falsified but rather that when immigration officials arrived at his school unannounced to verify his records, the headmaster was too busy to look up the records.

However, the record reflects that during the applicant's visa interview, he and his brother admitted that their parents had changed their dates of birth for visa purposes. Additionally, the record reflects that a Bone Age Test confirmed that the applicant and his brother had understated their ages and that the applicant was likely born in 1983 rather than 1985. Furthermore, State Department records indicate that school officials executed a sworn statement indicating that they had no record of the applicant attending the school. Therefore, the applicant has failed to demonstrate that he is not inadmissible for misrepresenting his age or providing false documentation. He is eligible to apply for a waiver as the son of a lawful permanent resident.

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.

Pursuant to section 212(i) of the Act, 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 himself can only be considered insofar as it causes extreme hardship to his qualifying spouse. 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 (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 U.S. 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.

On appeal, counsel for the applicant claims that the applicant's mother is an aging woman with health problems, including high blood pressure, anxiety, depression, diabetes, and dementia.

Counsel notes that the applicant's mother is upset about her separation from the applicant and that she worries about the applicant's safety in Bangladesh. Additionally, counsel states that the applicant's mother's health would deteriorate if she were to relocate to Bangladesh because air quality in that country is poor. Furthermore, counsel notes that Bangladesh is a dangerous and politically unstable country.

The applicant's mother states that she has struggled to control her high blood pressure and that she suffers from severe anxiety and depression due to the death of her husband in 2005 and her ongoing separation from the applicant and another son. She asserts that she cannot sleep, that she feels weak, that she is developing digestive problems, and that her depression is worsening. She also states that three of her other children and some of her grandchildren are in the United States, and that the entire family is close and they miss the applicant. She contends that the applicant took care of her when she was in Bangladesh and that she would like him to do so in the United States. She also fears for his safety in Bangladesh because it is a politically unstable country and "goons" frequently ask him for money or threaten him due to the fact that his family members live in the United States. Finally, the applicant's mother states that she would not be able to survive in Bangladesh due to her serious medical conditions and the poor healthcare system there. She also alleges that pollutants in the air and water would negatively affect her health.

The applicant indicates that he is very close to his mother and that she has been suffering extreme emotional and physical hardship in his absence. He also states that life is very difficult for him in Bangladesh due to the "extreme socio-political environment." He alleges that he has been threatened by individuals demanding money from him and his family. He has also struggled to support himself as a small-scale farmer and has become depressed by the possibility that he will not be able to come to the United States. Additionally, the applicant states that his mother is very concerned about his safety under the dictatorial regime and increasing terrorism in Bangladesh.

In an affidavit, a psychologist states that the applicant's mother has suffered emotionally in recent years due to the death of her husband. Since his death, she has focused on bringing the applicant and his brother to the United States and she would be "enormously solaced" if she were to succeed in that endeavor. Due to her concern over her sons, the applicant's mother has "developed depressive and anxiety based symptoms" including trouble sleeping, decreased appetite, weight loss, frequent crying, and difficulty focusing. The psychologist notes that the applicant's mother's symptoms will likely worsen if she remains separated from the applicant. The psychologist also explains that the applicant's mother lives with one of her sons in the United States and that her son accompanied her to her appointment. *See Affidavit*, [REDACTED], dated June 4, 2011.

The applicant's mother's doctor states that she has been diagnosed with dementia. The doctor further asserts that the applicant's mother "is abandoned by family; she lives alone, incapable to eat, to walk, to bath[e], to take medicine and other daily activity." *See Letter from* [REDACTED]

[REDACTED] dated May 30, 2012. Additionally, the doctor contends that although she referred the applicant's mother to a psychiatrist for anxiety and depressed mood and to a neurologist for her dementia, "[t]here is nobody who would take her . . ." *See id.* The doctor concludes by noting that the applicant's "children may play an important role for providing her moral support." *Id.*

The AAO finds that the applicant's mother would suffer extreme hardship if she were to relocate to Bangladesh. The record reflects that the applicant's mother has dementia, a serious, degenerative disease, as well as other health problems. The U.S. Department of State indicates that "[t]he general standards of sanitation and health care in Bangladesh are far below U.S. and European standards. . . . Psychological and psychiatric services are limited throughout Bangladesh." *See U.S. Department of State, Country Specific Information: Bangladesh*, dated January 18, 2013. Relocation would therefore deprive the applicant's mother of necessary care to manage her dementia. Additionally, the applicant's mother has close ties in the United States, including three of her children and some grandchildren. Finally, the applicant's mother has been a lawful permanent resident of the United States for nearly 13 years, so readjustment to life in Bangladesh would likely be difficult for her.

However, the AAO finds that the applicant has failed to demonstrate that his mother will suffer extreme hardship if she continues to be separated from the applicant. Although the applicant's mother clearly misses her sons who are in Bangladesh and worries about their wellbeing, the record does not support a finding of extreme hardship. Instead, the record reflects that the applicant's mother has the support of three of her other children in the United States. Although the doctor's letter alleges that the applicant's mother has been "abandoned by family" and that no one will take her to appointments, the affidavit from [REDACTED] indicates that she lives with one of her sons, who accompanied her to her appointment and assisted in translating. Nor do the applicant or his mother allege that she has been abandoned by her family; instead, she states that her family is close and mentions attending family gatherings in the United States. Additionally, while the evidence indicates that the applicant's mother is upset about her separation from the applicant and has exhibited some "depressive and anxiety based symptoms," there is no indication that she has been diagnosed with severe depression for which she has required continuing treatment, or that her emotional problems have prevented her from carrying out her daily activities. Finally, while the applicant's mother is concerned about the applicant's safety in Bangladesh, the evidence is insufficient to show that he is in danger or that his mother's concern about him has amounted to extreme hardship for her. Although the applicant's mother misses her son and may desire his support as well as his presence with his family members in the United States, the record does not reflect that she is suffering extreme hardship in his absence.

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. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident mother 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 an 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.