



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

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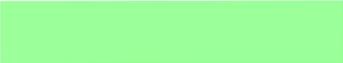


DATE: **MAR 20 2013**

OFFICE: NEW DEHLI, INDIA

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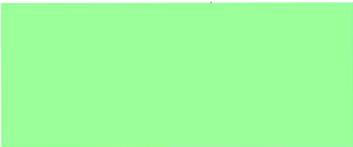
IN RE:

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:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal line extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India. The matter came before the Administrative Appeals Office (AAO) on appeal and the appeal was dismissed. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted and the underlying application will be approved.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 U.S. citizen spouse and children.

The field office director concluded that the applicant failed to establish that 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 January 14, 2010.

On appeal, the AAO concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and dismissed the appeal accordingly. *See Decision of the Administrative Appeals Office*, dated May 2, 2012.

In response, counsel for the applicant filed *Form I-290B*, Notice of Appeal or Motion to the Administrative Appeals Office. On the *Form I-290B*, in Part 2, counsel indicated that he was filing a motion to reopen and a motion to reconsider by marking box F. *See Form I-290B*, received June 7, 2012.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel contends that as a result of continued separation the applicant's spouse's medical conditions have worsened, he now suffers major depression with suicidal ideation, and has had to close his business of nearly 20 years as a result of making frequent lengthy trips to Bangladesh to be with the applicant and their three children. Corroborating medical records, a current psychological evaluation, and a notice of business entity dissolution have been submitted on motion as well as a new hardship affidavit from the applicant's spouse. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel contends that the AAO did not fully consider and weigh all the hardship factors and evidence thereof in the aggregate, and that if a waiver is not granted the applicant's U.S. citizen spouse will continue to suffer extreme hardship. The AAO finds that the applicant has met the requirements of 8 C.F.R. § 103.5(a)(2) and (3), and the motion will be granted and the application reconsidered.

The record has been supplemented on motion with: *Form I-290B* and counsel's statement thereon, counsel's supporting motion/brief; a new hardship affidavit; a current psychological evaluation; a

current physician's letter and medical records from 2005 and 2007; a notice of business entity dissolution; and a current country conditions report for Bangladesh. The record also contains, but is not limited to: an earlier Form I-290B and counsel's brief; various immigration applications and petitions; affidavits, statements and letters; medical records and a social worker's report; Bangladesh-related printouts; wire transfer receipts; marriage, divorce and birth records; records pertaining to DNA test results; and the applicant's inadmissibility and removal records. The entire record was reviewed and considered in rendering this 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.

The record reflects that on March 15, 2001 the applicant sought to procure admission into the United States by presenting a passport bearing an identity not her own. She disclosed her actual identity during secondary inspection. The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) but was paroled into the United States pending the outcome of her immigration court hearing. The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.¹

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 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.

¹ The field office director found that the applicant is further inadmissible under 212(a)(6)(C)(i) of the Act for additional acts of fraud/misrepresentation. As the AAO has already determined that the applicant is subject to section 212(a)(6)(C)(i) of the Act, for seeking to procure entry to the United States by presenting a fraudulent passport, as noted in detail above, and requires a waiver of inadmissibility under section 212(i) of the Act for her misrepresentation with respect to attempting to procure admission to the United States with a fraudulent passport as outlined in detail above, it is not necessary to evaluate whether the other incidents referenced by the field office director also amount to misrepresentation under section 212(a)(6)(C)(i) of the Act.

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. Hardship to the applicant or applicant's children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is her only qualifying relative. 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 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 record reflects that the applicant's spouse is a 52-year-old native of Bangladesh and citizen of the United States who has been married to the applicant since January 2003. They have three U.S. citizen children together, [REDACTED] who was born in Bangladesh. The applicant's spouse expresses tremendous love for the applicant and their children. He writes that when they were in the United States with him he was the happiest man on earth and since their January 2004 departure his world has been shattered. The applicant's spouse explains that the pain of separation was so great that he began living part of each year in Bangladesh to be with his family. He indicates that his extended absences from the United States have resulted in significant loss of income, the inability to pay insurance premiums, and ultimately the loss in September 2011 of the construction business he started nearly 20 years earlier. Corroborating documentary evidence has been submitted for the record. As noted previously, the record shows that the applicant's spouse is the primary if not sole financial provider for his family in Bangladesh and also supports his elderly lawful permanent resident mother who resides with him and suffers from numerous medical conditions including hypertension, uncontrolled diabetes and heart disease, and is reliant upon him on a day-to-day basis.

The applicant's spouse states that his greatest hardship is the mental torment of being separated from his family without whom he is miserable, suffers suicidal ideation and is constantly worried for their health and safety in Bangladesh. A recent U.S. State Department report submitted for the record shows that there are high rates of violent crime and traffic-related deaths in Dhaka where air quality is extremely poor and dangerous, Bangladesh is considered at extreme risk for natural disasters related to weather or other natural events, the general level of sanitation and health care is far below U.S. standards, water supplies are not potable, typhoid fever, cholera, infectious hepatitis, giardia, cyclospora, bacillary and amebic dysentery are common, multiple strains of influenza continue to circulate including H1N1 influenza A pandemic strain, and dengue fever and malaria are problems in Dhaka and surrounding areas. [REDACTED] reports that the applicant's spouse described symptoms of anhedonia, appetite disturbance, concentration difficulties, fatigue and significant suicidal ideation accompanied by a sense of extreme despair and helplessness. [REDACTED] diagnoses the applicant's spouse with Major Depressive Disorder that is severe in nature causing him extreme distress and interfering with his daily

functioning. [REDACTED] notes that he discussed with the applicant's spouse the need for treatment and an evaluation for psychotropic medication.

The applicant's spouse maintains that his medical/physical condition has declined significantly as a result of residing part of each year in Bangladesh. [REDACTED] writes that medical records demonstrate the applicant's spouse's history of significant medical difficulties including a serious liver abscess following a trip to Bangladesh for which he was hospitalized with severe pneumonia in a New York intensive care unit for approximately one month and which resulted in permanent damage to his liver. [REDACTED] notes that the applicant's spouse contracted Hepatitis in 2010 after another trip to Bangladesh and is currently being treated for these and a variety of other significant conditions. [REDACTED] MD, FAAFP confirms that the applicant's spouse has suffered a serious liver abscess and Hepatitis B and is currently being treated for emphysema complications, hypertension, high blood pressure, and depression with suicidal ideation.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including substantial economic difficulties resulting in the dissolution of the construction business he owned and operated for nearly 20 years; the economic and physical impact on his ability to support himself, his elderly and ailing mother who resides with him, his three young U.S. citizen children and the applicant in Bangladesh, as well as the financial and physical costs for himself and his mother of frequent travel and extended trips to Bangladesh; his significant psychological conditions including suicidal ideation and constant fear for the health and safety of applicant and their children in Bangladesh where crime, environmental, and health-related hazards are severe; the impact of these on his physical health and ability to function on a day-to-day basis; and his serious medical conditions which appear to have worsened as he has spent more time in Bangladesh to be with his family. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse is presently suffering and will continue to suffer extreme hardship due to separation from the applicant.

In the AAO's earlier decision on appeal, we found that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Bangladesh. The AAO reaffirms our earlier findings concerning relocation. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to Bangladesh to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of*

Mendez-Moralez, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301.

The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant family ties to the United States, particularly to her three young U.S. citizen children and her mother-in-law; the physical, emotional and familial support she has been providing her three children whom she has been raising and caring for in Bangladesh since 2004; her compliance with the terms of her removal order having departed as directed and not attempting to re-enter the United States during a lengthy and challenging period of separation; and her lack of any criminal record. The unfavorable factors are the applicant's immigration violations which include her attempt to enter the United States by presenting a false passport and related document(s) in March 2001 and

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periods of unlawful presence. Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden and the application will be approved.

ORDER: The motion is granted and the underlying Form I-601 application is approved.