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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: SEP 25 2013

Office: NEW YORK (GARDEN CITY)

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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DISCUSSION: The waiver application was denied by the District Director, New York, New York, and was subsequently appealed to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision will be affirmed.

The record reflects that the applicant, a native and citizen of Bangladesh, 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 admission to the United States through fraud or misrepresentation. The applicant sought admission to the United States on September 26, 1992 using a passport that belonged to another person. The applicant does not contest this finding of inadmissibility, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. Citizen spouse.

The District Director concluded that the applicant had 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. *Decision of the District Director*, dated January 27, 2010.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the District Director that extreme hardship to a qualifying relative had not been established and dismissed the appeal. *Decision of the AAO*, dated May 14, 2012.

On motion, filed on June 6, 2012 and received by the AAO on April 1, 2013, counsel submits additional evidence of financial hardship that the applicant's spouse would suffer if the applicant's waiver application is not approved and information regarding health conditions in Bangladesh. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. As the applicant has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

The record contains the following documentation: a statement by applicant's counsel, financial documentation, medical documentation, information on health conditions in Bangladesh, statements from the applicant and the applicant's spouse, and birth certificates for the applicant's children. 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, 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.

Section 212(i) of the Act provides that:

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....

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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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 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 that the applicant's spouse will suffer financial hardship if the applicant's waiver application is not approved, and she is separated from the applicant. The record indicates that the applicant's spouse is the proprietor of a *café*, and *gourmet*. The record includes a copy of the family's 2011 federal income tax return, which indicates that the applicant's spouse is the owner of a *café*, and that the gross receipts for the store totaled \$265,089 in 2011. The federal income tax return indicates an adjusted gross income of \$45,400 in 2011. On motion, counsel again contends that the applicant's spouse is not equipped to operate a store in the United States. However, as noted in the previous AAO decision, there is no evidence in the record to support this contention.

The applicant's spouse submitted an affidavit which states she is unable to run the store on her own and take care of the children at the same time. Although the assertions of the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record lacks sufficient evidence to demonstrate that the financial impact of separation on the applicant's spouse is above and beyond the hardships normally experienced, such that the applicant's wife would experience extreme hardship if the waiver application is denied and she remains separated from the applicant.

In regard to relocation, the AAO, in its previous decision, noted that the applicant also stated that the health conditions in Bangladesh are very bad, and that counsel asserted that that the health conditions in

Bangladesh would directly affect the applicant's wife and children; however, there was no evidence in the record to support these assertions.

On motion, counsel submits information regarding health conditions in Bangladesh. According to Country Specific Information on Bangladesh from the U.S. Department of State:

MEDICAL FACILITIES AND HEALTH INFORMATION: The general level 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. Traffic congestion and lack of modern centralized emergency services system (on par with 911 in the U.S.) makes patient transport slow and inefficient. Several hospitals in Dhaka (e.g., United, Apollo, and Square Hospitals) have emergency rooms that are equipped at the level of a community hospital, but most expatriates leave the country for all but the simplest medical procedures. Hospitals in the provinces are less well-equipped and supplied. Psychological and psychiatric services are limited throughout Bangladesh. There have been reports of counterfeit medications within the country, but medication from major pharmacies and hospitals is generally reliable. Medical evacuations to Bangkok or Singapore are often necessary for serious conditions or surgical procedures and can cost thousands of dollars.

http://travel.state.gov/travel/cis_pa_tw/cis/cis_1011.html#medical, accessed August 29, 2011.

Counsel indicates that the inadequacy of proper health care in Bangladesh would cause hardship to both the applicant's spouse and the applicant's children if they were to relocate to be with the applicant.

The applicant's spouse states that it would be dangerous for her children to relocate to Bangladesh. The Country Specific Information on Bangladesh from the U.S. Department of State submitted by counsel indicates that "the security situation in Bangladesh is fluid, and U.S. citizens are urged to exercise caution at all times and check with the U.S. Embassy for the latest information."

The applicant and his spouse have three children who were born in the United States. The record indicates that the three children do not speak the language of Bangladesh and have always resided in the United States. Court decisions have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American life style, The BIA found that uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the circuit court stated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown.

Based on the evidence on the record, the applicant has established that his spouse would suffer hardship if she were to relocate to Bangladesh based upon medical and safety concerns, and furthermore that the applicant's spouse would experience hardship due to extreme hardships that the applicant's children would face if they were to relocate to Bangladesh to be with the applicant. These hardships, when considered in the aggregate, would rise to the level of extreme hardship if the applicant's spouse were to relocate 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is granted and the prior AAO decision is affirmed.