



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

(b)(6)

[REDACTED]

Date: **APR 07 2014** Office: NEW YORK [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 (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

DISCUSSION: The waiver application was denied by the Acting District Director, New York, New York, 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 a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, he 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 his U.S. citizen spouse.

The acting 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 Acting District Director*, dated September 25, 2013.

In support of the appeal, counsel for the applicant submits a brief and a psychoemotional and marital dynamics assessment. The entire record was reviewed and considered in rendering this decision.

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:

- (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 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 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...

With respect to the acting district director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant attempted to procure entry to the United States in 1992 with a fraudulent passport and nonimmigrant visa. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation.

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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a 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-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 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. I.N.S.*, 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 applicant's U.S. citizen spouse contends that she will suffer emotional and financial hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration, the applicant's spouse explains that her husband is a wonderful person and his passionate care and affection has changed her life and removal of her husband will throw her in the darkness. She maintains that if the applicant relocates abroad, her psychological health will be seriously damaged. Furthermore, the applicant's spouse details that her husband cooks and takes care of other household duties, and were he to relocate abroad, there would be no one to cook or clean or do laundry and it will be impossible for her to do it herself due to her weak health. Finally, the applicant's spouse explains that she works part-time and is dependent on her husband's income, and without his financial contributions, she will experience financial hardship. *See Affidavit from* [REDACTED] dated July 1, 2013.

In support of the emotional hardship referenced, a letter has been provided from [REDACTED] LMHC. [REDACTED] states that the applicant's spouse has developed an Adjustment Disorder with Mixed Anxiety and Depressed Mood and Major Depressive Disorder. *See Psychoemotional and Marital Dynamics Assessment*, dated October 11, 2013. [REDACTED] does not outline what specific hardships the applicant's spouse will experience were the applicant to relocate abroad. While the AAO acknowledges the applicant's spouse's contention that she will experience emotional hardship were she to remain in the United States while her husband resides abroad, the record does not establish the severity of this hardship or the effects on her daily life. Further, with respect to the applicant's spouse's contention that she is in poor health, no letter has been provided on appeal from the applicant's spouse's treating physician outlining her current medical conditions, the severity of the situation, the short and long-term treatment plan, what specific limitations the applicant's spouse has, and what specific hardships she would encounter were her husband to relocate abroad. Finally, with respect to the financial hardship the applicant's spouse maintains she will experience were her husband to relocate abroad, no financial documentation has been provided on appeal establishing the applicant's and his spouse's current income and expenses and assets and liabilities, to establish that without the applicant's financial contributions, his wife will experience extreme hardship. While the applicant's spouse maintains that she is employed part-time, the record fails to establish that she is unable to work full-time and support herself. Alternatively, it has not been established that the

applicant would not be able to obtain gainful employment in Bangladesh and assist his wife. Notes in the record indicate that the applicant had a house and land in Bangladesh which he had given to developers to build a nine-floor apartment building. Finally, [REDACTED] references that the applicant's spouse has six adult children. It has not been established that they would be unable to assist their mother should the need arise. 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)).

The AAO recognizes that the applicant's spouse will endure hardship as a result of a long-term separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The record fails to establish that the applicant's spouse's emotional and financial well-being are dependent on the applicant's physical presence in the United States. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will experience extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility.

With respect to relocating abroad to reside with the applicant due to her inadmissibility, the applicant's spouse asserts that she will experience extreme hardship. She maintains that she will be exposed to violence, corruption and crime; substandard food, health care and education; arsenic-tainted drinking water; adulterated and polluted medicines; disease; health and environmental hazards; a severely reduced living standard; religious bigotry; hostility towards Americans; and lack of gainful employment opportunities. The applicant's spouse further contends that she traveled to Bangladesh in March 2011 and had to return to the United States earlier than expected due to numerous medical hardships. *Supra* at 3-11.

As noted by the acting district director, the applicant has not submitted any documentation establishing the specific hardships the applicant's spouse would experience were she to relocate to Bangladesh, her native country. Although counsel has submitted articles about country conditions in Bangladesh, they are general in nature and do not establish that the applicant's spouse specifically will experience extreme hardship. While the applicant's spouse asserts that she got sick in Bangladesh, counsel has not provided any documentation from a medical professional concerning the medical conditions she experienced abroad, the treatment she received, and the hardships she would encounter were she to return to Bangladesh. Further, as noted by the acting district director, the applicant's five siblings and an adult daughter reside in Bangladesh. The applicant has not established that they would be unable to assist the applicant and his wife should the need arise. The applicant has failed to establish that his U.S. citizen spouse would experience extreme hardship were she to relocate to Bangladesh, her native country, to reside with the applicant due to his inadmissibility.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record

demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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 appeal is dismissed.