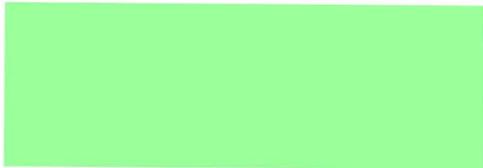


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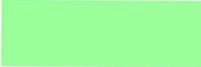
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

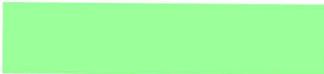


U.S. Citizenship
and Immigration
Services



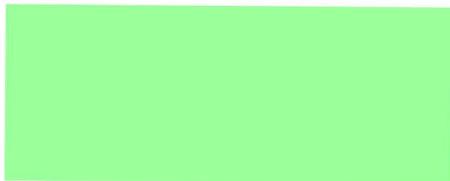
Date: **JUL 01 2014**

Office: SAN FERNANDO FIELD OFFICE 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:



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 San Fernando Field Office Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 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 and child.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, July 25, 2013.

On appeal, filed on August 20, 2013 and received by the AAO on February 5, 2014, counsel contends that the applicant's spouse has met the extreme hardship criteria set forth by the Board of Immigration Appeals in that the separation of family will have a severe financial, emotional, psychological, and cultural impact on her and her child. *See Brief in Support of Appeal*, dated August 19, 2013.

The record includes, but is not limited to, the following documentation: counsel's appeal brief, statements by the applicant's spouse, a psychological evaluation for the applicant and his spouse, medical documentation for the applicant's spouse, financial documentation, and country-conditions information on Bangladesh. 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:

- (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 indicates that the applicant attempted to enter the United States on May 14, 2001 using photo-substituted passport belonging to another person. The applicant does not contest his inadmissibility.

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

The Attorney General [now Secretary of the Department of Homeland Security (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 the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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. INS*, 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 would suffer financial hardship if the applicant’s waiver application is not approved. The record includes a statement by the applicant’s spouse in which she states that she has never worked in the United States and would not be able to care for her child, as she has no job skills and no access to funds, and that she depends on the applicant for support. The record further includes a psychological evaluation dated July 5, 2013 in which the psychologist states that the applicant’s spouse informed her that she has never worked. Financial documentation in the record includes copies of federal income tax returns from 2010 and 2011 filed by the applicant and his spouse, which indicate that the only income for the family was derived from the applicant’s position as a cashier.

Counsel further contends that the applicant’s spouse would suffer psychological and emotional hardship if the applicant’s waiver application is not approved. The record includes a psychological evaluation of the applicant and his spouse dated July 5, 2013. The psychologist diagnosed the applicant’s spouse with dependent personality disorder since she has low self-esteem and little definition of her identity. The psychologist stated that the applicant’s spouse has poor coping mechanisms and no assertiveness skills, feels helpless, and always defers to her husband. The psychological report indicates that the psychologist recommended the applicant’s spouse obtain psychotherapy to address these issues.

Counsel also states that the applicant's spouse is diabetic and is being treated for diabetes. The record includes a medical document dated August 14, 2013, which states that the applicant's spouse has been under the care of a physician since November 18, 2010 as she had developed gestational diabetes, although the post-partum follow-up for diabetes on June 16, 2011 was normal, and the applicant's spouse had no more signs of gestational diabetes.

The record establishes that if the waiver application were denied, the applicant's spouse would experience financial and emotional hardship as a result of loss of the applicant's income and support, separation from her husband, and her concern for her ability to support her son on her own. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she remained in the United States without the applicant.

Regarding hardship that the applicant's spouse may experience if she were to relocate to Bangladesh, the record indicates that the applicant's spouse was born and educated in Bangladesh and thus is familiar with the language and customs of that country. The record shows that the applicant's wife lived in Bangladesh until she was 22 years old and her family still resides in that country.

Counsel contends that the applicant and his spouse have ties to their family in the United States. The record indicates that the applicant has one brother in the United States, and the applicant's spouse has a cousin in the United States; there is no indication of any further family ties in the United States. The applicant has two brothers and four sisters residing in Bangladesh. We are unable to ascertain whether and to what extent the applicant would receive assistance from family members in Bangladesh for both himself and his family. In addition, the record indicates that the applicant's spouse has her parents and a brother and sister residing in Bangladesh. In the psychological evaluation dated July 13, 2013, the psychologist states that the applicant's spouse asserted that all of her family is in Bangladesh but they are in no position to support her or give her assistance if she went back to Bangladesh with the applicant. However, there is no evidence in the record to support the applicant's spouse's assertion regarding the inability of her family in Bangladesh to provide assistance. Further, it has not been established that the applicant would be unable to support his family were they to relocate to Bangladesh.

The applicant's spouse states that the conditions in Bangladesh are very bad, and cites the U.S. Department of State Country Reports on Human Rights Practices for Bangladesh. While the current report for 2013 states that the most significant human rights problems were arbitrary arrests, regulation of online speech, and poor working conditions and labor rights, it does not indicate widespread political unrest or instability. There are currently no travel warnings or travel advisories issued by the U.S. Department of State regarding travel to Bangladesh. With respect to safety and security, the U.S. Department of State states that political parties and other organizations call general strikes to articulate their demands, and even though the demonstrations are meant to be peaceful, they can become violent and unpredictable. The U.S. Department of State urges U.S. citizens to avoid all demonstrations in Bangladesh. The U.S. Department of State also advises U.S. citizens against traveling to the Khagrachari, Rangamati, and Bandarban

Hill Tracts districts due to kidnappings and other security incidents. However, other than these two advisories, the U.S. Department of State's Country Specific Information on Bangladesh does not include any further concerns on safety and security issues in Bangladesh. See <http://travel.state.gov/content/passports/english/country/bangladesh.html>, accessed June 19, 2014.

In regard to country conditions in Bangladesh, counsel states that the applicant has applied for political asylum in the United States. The record shows that on January 13, 2010, an immigration judge found that the applicant's testimony regarding his fear of persecution in Bangladesh not to be credible, and denied the applicant's application for asylum in the United States. The applicant's appeal on his asylum claim to the Board of Immigration Appeals (BIA) was dismissed on June 14, 2012. A subsequent motion to reopen was denied by the BIA on October 23, 2012.

Based on the evidence on the record, the applicant has not established that his spouse would experience hardship beyond the common results of removal if she were to relocate to Bangladesh to reside with him. Considering the evidence of hardship in its cumulative effect, the applicant has not established that his spouse would experience extreme hardship were she to return to Bangladesh with him.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, 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. We have long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 relocation, 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 appeal is dismissed.