



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 06 2015**

FILE #: [REDACTED]

APPLICATION #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Fernando, California, denied the application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the decision to dismiss the appeal will be affirmed.

The record reflects that 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 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 the Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director*, dated July 25, 2013.

On appeal we found that the applicant has established that his spouse would experience extreme hardship due to separation from him, but that he had failed to establish extreme hardship to his spouse if she were to relocate to Bangladesh to reside with him. *See Decision of the AAO*, dated July 1, 2014.

On motion the applicant submits additional country information for Bangladesh and an updated psychological evaluation for his spouse. The record contains statements by the applicant's spouse, a prior psychological evaluation for the applicant and his spouse, medical documentation for the spouse, financial documentation, and country conditions information for 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 a 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. 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).

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

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.

As noted, on appeal we found that the applicant has established that his spouse would experience extreme financial and emotional hardship due to separation from the applicant. Therefore this criterion will not be addressed on motion. In the same decision, however, we determined that the applicant has not established that his spouse would experience extreme hardship if she were to relocate to Bangladesh to reside with the applicant. In that decision we noted that the applicant’s spouse was born and educated in Bangladesh, is familiar with the language and customs, lived in Bangladesh until she was 22 years old, and has family there. We also found that it had not been established that the applicant would be unable to support his family were they to relocate to Bangladesh. We further noted that although 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, the report does not indicate widespread political unrest or instability and there are no current travel warnings or advisories issued by the U.S. Department of State for Bangladesh.

On motion the applicant submits an affidavit from a political science professor in regard to conditions in Bangladesh and in support of the contention that the applicant’s spouse will

experience hardship abroad. The affidavit provides a description of the political climate in Bangladesh, including rivalries between political parties and violence among student activist groups. The author indicates that from a review of information provided by the applicant, he was a well-known student political activist who has enemies and would be at risk if he returned to Bangladesh. The affidavit states that the applicant's spouse will be persecuted by the applicant's enemies and their son will risk kidnapping. As we noted in dismissing the appeal, the applicant's application for asylum was denied by an immigration judge on January 13, 2010, with an appeal of that decision to the Board of Immigration Appeals (BIA) dismissed on June 14, 2012, and a subsequent motion to reopen denied by the BIA on October 23, 2012. Therefore we give limited weight to the assertion that the applicant would be targeted for his political activities in Bangladesh with resulting hardship to his spouse.

The affidavit further states that the applicant's son has no knowledge of the language and culture, would face a poor education and adulterated medications, would be unable to eat the food, and his family would face political persecution as well as economic and physical hardship. No additional country information or other evidence has been submitted concerning conditions in Bangladesh to establish that the applicant's child specifically will experience hardship in Bangladesh which, in turn, will cause extreme hardship to the applicant's spouse, the only qualifying relative in this case.

On motion the applicant submits an updated psychological evaluation of his spouse from a session on July 23, 2014. The report states that the spouse's family ties in Bangladesh are tenuous and unpredictable and that her relatives do not have resources to support her or specifically to provide ongoing monitoring of her physical and mental conditions. It states that the applicant's spouse is unlikely to be able to access necessary medical and psychological support in Bangladesh since she and her son would be immigrants there. The evaluation notes the spouse's diagnosis of Dependent Personality Disorder and describes her pervasive and extensive need to be taken care of, leading to submissive and clinging behavior and a fear of separation that can culminate in feeling stupid, taking criticism as proof of worthlessness, and having impaired occupational functioning or in obtaining skills. It asserts that treatment requires extensive intervention by a specialist as the spouse's condition does not remediate on its own, but without assistance can deteriorate and may lead to psychotic manifestations. The evaluation states that the spouse's condition is more than simply the result of separation from family or cultural readjustment, but a pattern of profound lack of basic and adequate coping skills. The evaluation asserts that having relatives in Bangladesh is not evidence that they can care for the applicant's spouse and son. A previous psychological evaluation, dated July 5, 2013, states that the spouse's family in Bangladesh is in no position to support the spouse or give her assistance.

In dismissing the appeal we noted that there is no evidence in the record to support the spouse's assertion regarding the inability of her family in Bangladesh to provide assistance. On motion these concerns have not been sufficiently addressed. There is no explanation or evidence in the record to support the assertion that the spouse's family is unable to provide assistance to the applicant's spouse. We note that, although the spouse has been diagnosed with Dependent Personality Disorder and described as having a pervasive need to be taken care of, and the

psychological evaluation indicates that the spouse needs extensive intervention by a specialist, the record does not indicate that the spouse has been obtaining assistance or provide an explanation as to why she has not. Further, the initial psychological evaluation also indicates that the applicant's spouse came to the United States on her own, enrolled in classes for English as a Second Language, completed classes through high school and graduated, and she stated she wants to obtain a Certificate in Child Development. While we acknowledge that the applicant's spouse will experience emotional hardship were she to relocate abroad, the record does not establish the severity of this hardship or the effects on her daily life or support the assertion that she is unable to care for herself and her son.

In dismissing the appeal we also noted that it has not been established that the applicant would be unable to support his family were they to relocate to Bangladesh. On motion this has not been sufficiently addressed. The record indicates that the applicant was about 30 years old when he left Bangladesh and he indicates on his Biographic Information (Form G-325A) that in the United States he has been working in a cashier-management position. There is no evidence that the applicant would not be able to obtain employment or that he does not have transferable skills he could deploy in Bangladesh to support his spouse.

The psychological evaluations note that the spouse states she was diagnosed with Gestational Diabetes when pregnant and that a doctor told her she needed ongoing monitoring as she is now more predisposed to becoming diabetic. The record contains no documentation from the applicant's spouse's treating physician concerning any medical condition the spouse has to support the assertion that she would medical experience hardship were she to relocate abroad.

In light of the above we find evidence in the record does not establish that the applicant's spouse would experience hardship that rises to the level of extreme if she were to relocate to Bangladesh, her native country.

As noted in dismissing the appeal, 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 relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

On motion, the applicant has not submitted evidence sufficient to establish extreme hardship to his spouse if she were to relocate to Bangladesh to reside with the applicant. We therefore find the applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying

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NON-PRECEDENT DECISION

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family member, no purpose would be served in determining 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 motion will be granted and the decision to dismiss the appeal will be affirmed.