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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-M-

DATE: DEC. 2, 2015

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Bangladesh, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, New York District Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

The Director found that the Applicant had not established that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility or that he was deserving of a favorable exercise of discretion. The waiver application was denied accordingly. *Decision of the Director*, dated May 1, 2009.

On appeal, filed on May 29, 2009, and received by us on April 1, 2015, the Applicant asserts that separation would cause extreme hardship to his U.S. Citizen spouse¹ and U.S. citizen children. On appeal, the Applicant submits financial documentation. 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

¹ At the time of the Director's decision, the Applicant was married to another U.S. citizen, the sister of his current wife, whom he subsequently divorced on [REDACTED] 2010. On [REDACTED] 2010, the Applicant married his current spouse, the petitioner of the Form I-130, Petition for Alien Relative, submitted on his behalf in January 2011 and approved on March 25, 2015.

admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

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.

The record reflects that the Applicant entered the United States on May 27, 1995, as a J-1 Exchange Visitor to attend a camp counseling program that he never attended. In an affidavit dated April 16, 2003, the Applicant stated that when he entered the United States as a nonimmigrant, he had the intent to live, work, and remain in the United States indefinitely. Based on this information, the Director determined the Applicant was inadmissible for fraud or misrepresentation. The Applicant has not contested that finding of inadmissibility.

We note that the Form I-130 submitted by the Applicant's former spouse was denied by the Director on May 1, 2009, because the Petitioner had not established the marriage was bona fide.² The Applicant's Form I-485 was denied on October 26, 2009, because the Applicant was found ineligible to adjust his status under section 245 of the Act based on the denial of the underlying Form I-130. The Director denied the Form I-601 on May 1, 2009, based on a finding that extreme hardship to a qualifying relative had not been established and that the Applicant did not merit a favorable exercise of discretion, in light of a "pattern of providing information and documents. . . found to be fraudulent and not truthful."

The applicant was found ineligible to adjust status for reasons other than his inadmissibility under section 212(a)(6)(C)(i) of the Act, and at the time this appeal was filed, he did not have an approved Form I-130 petition and was not eligible for adjustment of status, regardless of whether he was admissible or whether a waiver was available for any ground of inadmissibility.

A Form I-601 is viable when there is a pending Form I-485 or immigrant visa application. In this case, the Applicant's Form I-485 was denied on October 26, 2009. As described above, the Director

² The Director approved the Form I-130 filed by the Applicant's current spouse, the sister of his former spouse, on March 25, 2015. In approving the Form I-130, the Director did not make a finding that the Applicant had entered into his previous marriage solely to circumvent the immigration laws, which would preclude approval of the current Form I-130 petition pursuant to section 204(c) of the Act. We note, however, that the Applicant had one child with his current spouse before and one child during his marriage to her sister, and the denial of the previous Form I-130 was based on a finding that the marriage was not bona fide and that both parties intentionally tried to hide this family relationship during their interview.

found the Applicant had failed to establish his eligibility to adjust his status to that of a lawful permanent resident under section 245 of the Act because the underlying visa petition had been denied. We find, however, that even if the Applicant's Form I-601 were still considered viable despite the denial of the underlying Form I-130 and Form I-485, the Applicant has not established he is eligible for a waiver under section 212(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. The Applicant's 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. *Salcido-Salcido v. INS*, 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.

On appeal the Applicant asserts that his spouse and children depend on his income, and were he to relocate abroad while they remain in the United States, they would be in danger of becoming public charges. The record contains no statement from the Applicant’s spouse detailing any financial hardship she or their children will experience without the Applicant’s presence. We note that the record establishes that the Applicant’s spouse has been gainfully employed since January 2003. The Applicant has not submitted documentation establishing the household’s current expenses, assets, and liabilities, or the family’s overall financial situation, to establish that without the Applicant, the Applicant’s spouse will experience financial hardship. Further, the Applicant has not established that he would be unable to obtain gainful employment abroad that would permit him to assist his wife should the need arise. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

As for the emotional hardship referenced on appeal, the record does not contain any supporting documentation to establish that the hardships faced by the Applicant’s spouse due to separation from the Applicant would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has thus not established that his spouse will experience extreme hardship were she to remain in the United States while he relocates abroad as a result of his inadmissibility.

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In regard to relocating abroad to reside with the Applicant due to his inadmissibility, this criterion has not been addressed. The Applicant has thus not established that his spouse, who was born in Bangladesh, will experience extreme hardship were she to relocate to her native country to reside with the Applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the Applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

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.

Cite as *Matter of M-M-*, ID# 13755 (AAO Dec. 2, 2015)