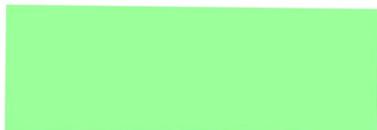


(b)(6)



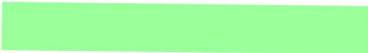
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



Date: **JAN 30 2015**

Office: NEW YORK

FILE: 

IN RE: 

PETITION: 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:

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York and the decision to deny the applicant was affirmed on motion by the District Director. The matter 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 admission to the United States by fraud or willful misrepresentation. The applicant 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 lawful permanent resident spouse.

The district director found that the applicant 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. The decision to deny the Form I-601<sup>1</sup> was affirmed on motion by the District Director.

On appeal, counsel submits a brief, copies of two AAO decisions,<sup>2</sup> biographic documents pertaining to the applicant's spouse and her family, financial documents, medical documentation pertaining to the applicant's spouse's mother, and copies of documents previously submitted. 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

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<sup>1</sup> The Form I-290B submitted by counsel in January 2013 indicated that the applicant was requesting a motion to reopen and reconsider both Forms I-601 and I-485. The district director's motion decision also referenced both forms.

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1. The AAO exercises appellate jurisdiction only over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of U.S. Immigration and Customs Enforcement.

The AAO only has jurisdiction to review denials of applications for adjustment of status filed by aliens seeking the bona fide marriage exemption, section 13 of the Act of 1957, and aliens in U or T nonimmigrant status. Sections 245(e), (l), and (m) of the Act; 8 C.F.R. §§ 245.1(c)(8)(viii), 245.3, 245.23(i), and 245.24(f)(2). We do not have jurisdiction over an appeal of the denial of a Form I-485 adjustment application filed under section 245 of the Immigration and Nationality Act. As such, we will not review the district director's decision to deny the Form I-485, and the district director's decision to affirm that denial on motion. The instant decision relates only to the merits of the applicant's Form I-601.

<sup>2</sup> In his brief counsel mis-identified these as decisions from the Board of Immigration Appeals (BIA).

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...

The record establishes that the applicant entered into a fraudulent marriage in September with his first wife, a U.S. citizen, in order to evade the United States immigration laws. The applicant is thus inadmissible under section 212(a)(6)(C)(i) of the Act, for having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility on appeal.

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 lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the applicant, his in-laws, or the children 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). 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 Ige*, 20 I&N Dec. 880 (BIA 1994)

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 (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 lawful permanent resident spouse contends that she will suffer extreme hardship were she to remain in the United States while her spouse relocates abroad due to his inadmissibility. The applicant's spouse contends that her husband is the sole provider for the family and were he to relocate abroad, she would not be able to support herself and their two children on her own and she will lose the family home. She further contends that she has been diagnosed with a condition that requires monitoring and were her husband to relocate abroad, she would not be able to afford medical care. She maintains that her father is unable to help her financially. She also contends that as a result of her medical condition, she oftentimes experiences symptoms including headaches, vomiting, earaches and dizziness, and she needs her

husband's daily care and support. Finally, the applicant's spouse contends that she and her children will experience emotional hardship due to long-term separation from the applicant.

In support, the applicant has submitted previously submitted letters from his spouse's treating physician and a psychologist who evaluated the applicant's spouse. The medical documentation submitted on appeal is from January 2012, the psychological evaluation is from December 2012, and the applicant's affidavit is from March 2012, approximately two years prior to the instant appeal submission. The applicant has not submitted any current medical or mental health documentation pertaining to his spouse. While we acknowledge the applicant's spouse's contention that she will experience hardship were she to remain in the United States while her husband relocates abroad, the record does not establish the severity of this hardship or the effects on the applicant's spouse's daily life. Further, the record establishes that the applicant's spouse has an extensive family network in New York, including her father, her mother, and three siblings. The applicant has not established that they would be unable to assist his wife as needed.

As for the financial hardship referenced, the applicant has not submitted documentation establishing his and his spouse's complete financial picture, including income and expenses and assets and liabilities. In addition, the applicant has failed to establish that his wife would be unable to obtain gainful employment with adequate health care coverage. Further, the applicant has not submitted any documentation to establish that he would be unable to obtain gainful employment abroad that would permit him to assist his wife and children financially. 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 applicant has thus not established that his spouse would experience extreme hardship were she to remain in the United States while he relocates abroad due to his inadmissibility.

In regard to relocating abroad to reside with the applicant as a result of his inadmissibility, the applicant's spouse maintains that she would be at a higher risk of going blind due to the condition of her tumor and the inability to obtain effective and affordable medical follow-up abroad. The applicant's spouse also asserts that her husband will not be able to obtain gainful employment to support her and the children. Further, the applicant's spouse contends that her children will experience hardship in Bangladesh and their education will be set back. The applicant's spouse also maintains that her immediate family resides in the United States and long-term separation from them will cause her hardship.

The applicant has not submitted sufficient evidence to establish that he will be unable to obtain gainful employment in Bangladesh. The applicant has also not established that his spouse would be unable to visit her immediate relatives and the medical professionals familiar with her condition in the United States. Further, the record does not establish that the applicant's spouse would experience medical hardship in Bangladesh. While the applicant's spouse's treating physician, a practitioner in [REDACTED] New York, states that medications are costly in Bangladesh and quality is sometimes questionable, the record contains no documentation to support the

assertion. Finally, no supporting documentation has been provided establishing that the applicant and her spouse would lose their home and would not be able to keep up with their financial obligations were they to reside abroad. The applicant has thus not established that his spouse would experience extreme hardship were she to reside abroad.

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 we are 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.

The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.