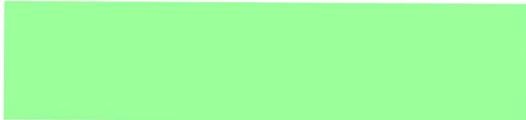




U.S. Citizenship
and Immigration
Services

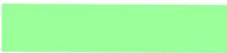
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Date: **MAR 02 2015**

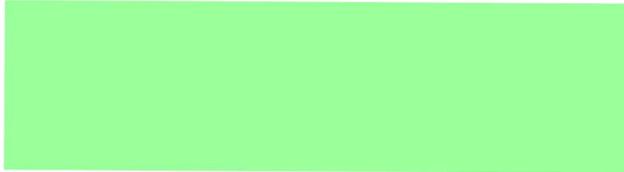
Office: ATLANTA FIELD OFFICE

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 Field Office Director, Atlanta, Georgia, denied the waiver application and 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director* dated April 24, 2014.

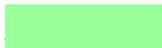
On appeal the applicant contends that USCIS erred by not finding his spouse would suffer extreme hardship as a consequence of his inadmissibility. The applicant asserts that his spouse suffers from a depressive disorder due to traumatic events throughout her life. He further states that her condition is exacerbated by the prospect of him departing the country, and her hardship would be beyond that normally experienced from the absence of a loved one due to inadmissibility. With the appeal the applicant submits a psychological evaluation for his spouse. The record contains statements from the applicant and his spouse, letters of support from friends of the applicant and the spouse's family, financial documentation, medical documentation for the applicant's spouse, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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.

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 on October 10, 1992, the applicant attempted to enter the United States by presenting a fraudulent passport issued in the name of another person. Based on this information the field office director determined the applicant was inadmissible for fraud or misrepresentation. The applicant has not contested the finding that he is inadmissible under Section 212(a)(6)(C)(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. 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 will suffer extreme psychological and medical hardship as she has experienced emotional, physical, and verbal abuse throughout her life, which caused emotional and physical injuries and suicidal thoughts that are now exacerbated to the point where she is using alcohol to manage her symptoms. The applicant asserts that the psychological distress is affecting his spouse’s ability to function in her job and will affect her employment and financial stability.

The applicant’s spouse states that since they married, she and the applicant are one in every way, sharing a home and family. She states that the applicant has inherited her family and friends during their marriage and that his leaving would be tragic to her family. The applicant states that he is grateful for his spouse’s family as he has no family of his own, and the spouse’s mother states that the entire family will suffer if the applicant leaves as he is an important part of family and the main source of emotional support for his spouse.

The psychological evaluation indicates that the applicant’s spouse has never received psychiatric treatment, but she reports that she has a history of depression and anxiety, her symptoms have increased due to the applicant’s immigration status, and she worries about the future. The evaluation states that the spouse describes her stepfather as emotionally and physically abusive and that she sometimes lived in shelters or was homeless. The evaluation states that the spouse reports that the applicant was her first trusting relationship and that she now fears being alone. The evaluation further states that the spouse’s symptoms include anxiety about future events and consequences and it diagnoses her with Anxiety and Mood Disorder and a Major Depressive Disorder. The evaluation surmises that the applicant serves as his spouse’s primary emotional support and he is a vital part of her recovery. Although the evaluation states that the applicant’s spouse has no family in Georgia, letters from the spouse’s mother and stepfather indicate they live in Georgia, and it appears from the

mother's letter that many other relatives live in the area and that they frequently spend time together. Further, the applicant states that he and his spouse spend every holiday and special occasion with the spouse's family.

We find that the evaluation provided does not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. The evaluation indicates that during the interview the spouse reported emotional trauma throughout her life and current symptoms due to the prospect of the applicant leaving. However, neither the applicant's spouse nor her family members mention any of the past abuse in their statements or how the applicant helps his spouse overcome emotional issues, but rather they reference the closeness of her family, and they provide no description of emotional symptoms she now experiences related to the prospect of being separated from the applicant. We acknowledge that the applicant's spouse will experience emotional hardship due to separation from the applicant, but there is not enough detail about the severity of that hardship and the effects on the spouse's daily life to establish that it would result in extreme hardship.

Medical documentation submitted to the record shows that the applicant's spouse had a medical visit for fibroids, but offers no explanation from a treating physician of any condition or prognosis requiring the applicant's physical presence in the United States.

The applicant asserts that his spouse would suffer financial hardship without him. The spouse states that as a couple they support each other financially, emotionally, and spiritually, and states that she is struggling to pay college debt while living on an extreme budget and working full time with several side jobs to make ends meet. She states that she cannot go back to the days of dodging bill collectors and working 10 to 13 hours a day to survive. The applicant states that he helps his spouse financially, paying half of her bills, helping with her debt and daily living expenses, and contributing to savings for their future. He states that he considers himself the breadwinner and supporter of the household.

The record contains income information for the spouse, but no documentation has been submitted establishing her current expenses, assets, and liabilities or her overall financial situation. The record contains a 2013 joint income tax filing, which does not establish the applicant as the principle wage earner. The spouse's 2011 Form W-2 and pay statements from 2012 and 2013 indicate that she earned more than \$40,000 and that her income accounted for most of the reported income for the applicant and his spouse in 2013. We further note that the psychological evaluation states the spouse indicated that the applicant is not working, so the evidence on the record does not support the assertion that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. Further, 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).

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant due to his inadmissibility. We recognize that the

applicant's spouse will endure some hardship as a result of long-term separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

We do find, however, that the record establishes that the applicant's spouse would experience extreme hardship if she were to relocate to Bangladesh to reside with the applicant. The spouse states that she cannot live in Bangladesh because she does not speak the language, she has different views on women's rights, and because the primary religion is Islam. The spouse states that she was raised a Christian Baptist with her stepfather a preacher and that she has very strong ties to her Christian Baptist upbringing from which she will never waiver. She further states that she has been diagnosed with uterine fibroids womb that require frequent visits to her doctor, and that if she were to decide to have children she would need an operation to remove them but she does not believe she could get the necessary treatment in Bangladesh.

The applicant submits country information showing low workforce participation for women and discrimination against women in family laws. According to the U.S. Department of State, the capital of [REDACTED] has a high crime rate; urban crime commonly encompasses fraud, theft, robbery, carjacking, rape, assault, and burglary; and women should observe stringent security precautions, including avoiding use of public transport after dark without the company of known and trustworthy companions. It further notes that sanitation and health care in Bangladesh are far below U.S. standards and that despite government efforts, community sanitation and public health programs are inadequate. *U.S. Department of State, Bureau of Consular Affairs - October 16, 2014*

Here the record establishes that the applicant's U.S. citizen spouse was born in the United States and has no ties to Bangladesh. She would have to leave her family, most notably her parents and siblings, her community, and her long-term employment, and she would be concerned about her health and safety as well as her financial well-being in Bangladesh. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or

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NON-PRECEDENT DECISION

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inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying 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 appeal is dismissed.