



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

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

MATTER OF M-H-

DATE: SEPT. 30, 2015

MOTION OF AAO 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 (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, West Palm Beach, Florida, denied the application. We dismissed the appeal. The matter is now before us on motion. The motion to reconsider is granted and the appeal is sustained.

The Director found that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. We found that although the Applicant established extreme hardship to his qualifying relative as a result of separation, he had not shown extreme hardship as a result of relocation, and we dismissed the appeal accordingly.

On motion to reconsider, the Applicant asserts that his spouse would experience extreme hardship upon relocation to Bangladesh if his waiver application is denied.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The motion's supporting evidence includes, but is not limited to, the Applicant's brief which cites to relevant case law, an updated psychological evaluation, and medical articles. Based on the legal arguments presented, the requirements of a motion to reconsider have been met.

The record includes, but is not limited to, the aforementioned documents, a brief in support of the motion, a psychological evaluation, country-conditions information on Bangladesh, the Applicant's statement, medical records, financial records, and educational records. The entire record was reviewed and considered in arriving at a decision on the motion.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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:

- (1) 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.

The record reflects that on February 27, 1988, the Applicant presented a photo-substituted passport when he attempted to enter the United States. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by willful misrepresentation of a material fact. The Applicant does not contest this ground of inadmissibility.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bars imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the Applicant. Hardship to the Applicant or his children is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the Applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (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*, 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.

As we previously found extreme hardship to the Applicant's spouse upon separation, we will only address hardship to her upon relocation to Bangladesh. The Applicant states that his spouse was in a serious car accident; she cannot drive a car due to the psychological trauma of the accident; she had surgery and recovered well; and there is no evidence that this surgery was an isolated incident. The Applicant states that his spouse suffers from significant mental health issues; medical facilities in Bangladesh are not close to those in the United States; and his spouse and children would face the loss of health care. The Applicant states that his spouse and children would face the loss of their personal safety, as crime levels in Bangladesh are higher than in the United States and the country

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has documented violence and societal dangers. The Applicant states that his spouse has resided in the United States for 10 years; their children were born and raised in the United States; they would have a tough time adjusting to life in a new country and are not able to read and write at a level to study there; and the stress endured by the children would cause additional stress on the their emotionally unstable mother. The record includes educational records for the Applicant's children and their birth certificates reflect that they are [redacted] years old and [redacted] years old.

The psychologist who evaluated the Applicant's spouse stated in his initial report that the Applicant's spouse was in a serious car accident with her then young son and she sustained back and neck injuries; she sleeps poorly due to her pain and tension; the Applicant's son likely has learning problems or attention deficit hyperactivity disorder; the Applicant's children would face the loss of their home, friends, educational, and economic futures if they relocated to Bangladesh; employment prospects for the Applicant and his spouse would be limited in Bangladesh; and medical facilities would be limited in Bangladesh.

The psychologist states in his updated report that the Applicant's spouse meets the DSM-IV-TR criteria for major depressive disorder, recurrent and dependent personality disorder, and her mental condition would worsen in Bangladesh. The psychologist states that it is unlikely, if not impossible, that she will receive treatment in Bangladesh, citing to statistics from a 2007 World Health Organization report to support his claim. The psychologist states that the Applicant's son has major depression and attention deficit hyperactivity disorder; which would not be treated in Bangladesh; and the Applicant's spouse's mental condition would deteriorate as she would feel like a helpless mother of an ill child.

The Applicant's spouse's medical records indicate that in 2001 she had cervical pain, a head injury and sprains, fractures, and contusions. In 2010 she was diagnosed with symptomatic cholelithiasis. The psychologist states that it is unlikely that the Applicant's spouse would receive adequate medical attention in Bangladesh. The record includes Department of State country specific information for Bangladesh, which reflects that government facilities for the mentally disabled are largely inadequate and medical facilities do not approach U.S. standards. The psychologist cites to U.S. Department of State information reflecting that community sanitation and public health programs are inadequate, water supplies are not potable, and serious diseases are transmitted through drinking water.

The record reflects that the Applicant's spouse has significant psychological issues, and it would be very difficult for her to obtain suitable mental health care in Bangladesh. Moreover, she has resided in the United States for ten years. In addition, she would experience hardship due to hardship her adult children would experience in Bangladesh, one who has major depression and attention deficit hyperactivity disorder. It would be very difficult for her son with the aforementioned issues to obtain suitable treatment in Bangladesh. In the alternative, she would be separated from her adult children, and she would experience hardship from this separation, especially in light of her son's conditions. Furthermore, general country conditions in Bangladesh would become as a source of hardship, although the Applicant's is originally from Bangladesh. Based on the totality of the

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hardship factors presented, we find that the Applicant's spouse would experience extreme hardship if she relocated to Bangladesh.

Considered in the aggregate, the Applicant has established that his spouse would face extreme hardship if his waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Morales*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Morales* at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported,

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service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

*Id.* at 301 (citation omitted).

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the Applicant's case include the Applicant's U.S. citizen spouse and children, extreme hardship to his family if he were not granted a waiver of inadmissibility, his lack of a criminal record since 1988, and his role as a supportive husband and father.

The unfavorable factors in the Applicant's case include the Applicant's misrepresentation, his unauthorized employment, his period of unauthorized residence in the United States, and his [REDACTED] 1988, conviction for conspiracy to enter the United States illegally.

We find that the violations committed by the Applicant are serious in nature; nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met.

**ORDER:** The motion to reconsider is granted and the appeal is sustained.

Cite as *Matter of M-H-*, ID# 12923 (AAO Sept. 30, 2015)