

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



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



H6

FILE:



Office: NEW DELHI

Date: DEC 02 2010

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director (“field office director”), New Delhi, India. 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure, and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure benefits provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and sons.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Acting Field Office Director*, dated June 9, 2008.

On appeal, counsel for the applicant asserts that the applicant will help his wife and sons in United States, and that they need him. *Statement from Counsel on Form I-290B*, dated June 26, 2008.

The record contains statements from counsel; a letter from a physician regarding the applicant's children's health; a letter from a physician regarding the applicant's wife's mental health; a copy of a prescription for the applicant's wife; a letter from a counselor from the applicant's son's school; statements from the applicant and his wife; a medical document for the applicant; a copy of a marriage certificate for the applicant; a copy of a DNA test to show that the applicant is the father of one of his sons; a police clearance certificate to show that there are no adverse records on the applicant in Bangladesh; a copy of the applicant's wife's naturalization certificate, and; copies of financial documents for the applicant and his wife. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

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

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 reflects that the applicant entered the United States without inspection on or about September 6, 1989. During his time in the United States, the applicant committed numerous acts of misrepresentation in attempt to obtain benefits under the Act, including, but not limited to, the use of four separate false identities, the presentation of fraudulent identity documents, and the filing of fraudulent applications for asylum and work authorization. The applicant has been subject to two orders of deportation or removal, effective January 9, 1990 and March 7, 2000, though he did not present himself for removal. The applicant departed the United States in 2003 using his fourth false identity.

Based on the foregoing, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until he departed in 2003. This period totals over five years. He now seeks reentry as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure.

The applicant was further found inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure benefits provided under the Act by willful misrepresentation.

The applicant does not contest his inadmissibility under sections 212(a)(6)(C)(i) or 212(a)(9)(B)(i)(II) of the Act on appeal, and he requires waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(i)(1) of the Act provides, in pertinent part, 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 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[.]

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. Cf. *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the

respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

On appeal, counsel for the applicant asserts that the applicant will help his wife and sons in United States, and that they need him. *Statement from Counsel on Form I-290B* at 2. Counsel previously stated that the applicant's children were ages four and 10 as of July 12, 2007. *Prior Statement from Counsel*, dated July 12, 2007. Counsel asserted that the applicant's wife and children will endure hardship if the applicant remains outside the United States for 10 years, particularly given that the applicant will miss his children's passage through adolescence. *Id.* at 1. Counsel provided that the applicant's wife is paying all of her bills on her own and with funds borrowed from a bank and her brother, including her mortgage and monthly bills. *Additional Prior Statement from Counsel*, dated October 4, 2007. Counsel indicated that the applicant's wife could not meet her minimum expenses for house maintenance. *Id.* at 2.

The applicant's wife states that she did not know the applicant's immigration status until after they married, as the applicant feared she would not marry him if she was aware of his circumstances. *Statement from the Applicant's Wife*, dated June 19, 2008. She adds that she has been in the United States for 30 years, she has a well-respected job, and she would not commit a crime. *Id.* at 1. She expressed that she is having a difficult time without the applicant, and that their children need a father role model in their lives. *Id.* She indicated that she faces difficulty finding and funding suitable childcare while she works. *Id.* She explained that, if the applicant were in the United States, they could work alternate shifts without the need for child care services. *Id.*

The applicant expresses remorse for his violations of U.S. immigration law. *Statement from the Applicant*, dated July 1, 2008. He provides that he wishes to return to the United States so that his family can survive. *Id.* at 1. He states that his sons and wife miss him. *Id.* The applicant previously stated that, without his love, his family will be exposed to "all sorts of dangers." *Prior Statement from the Applicant*, dated July 12, 2007.

The applicant submitted a letter from a physician for his wife, [REDACTED] who indicated that the applicant's wife has a panic disorder with generalized anxiety disorder, and severe depression due to unavoidable circumstances. *Letter from [REDACTED]*, dated June 24, 2008. [REDACTED] indicated that the applicant's wife is having difficulty working full-time and raising her two children without the applicant's presence. *Id.* at 1. He stated that he referred the applicant's wife to a psychiatrist for further treatment. *Id.* He added that bringing the applicant to the United States would resolve the applicant's wife's problems. *Id.*

The applicant submitted a copy of a prescription for his wife for Zoloft and Klonopin.

The applicant provided a letter from a physician for his two sons, [REDACTED] who expressed concern for their medical and emotional condition. *Letter from [REDACTED]*, dated October 6, 2007. [REDACTED] stated that the applicant's wife reported that the applicant's sons were exhibiting mood swings and general misbehavior, and he attributed it to their separation from the applicant. *Id.* at 1. He posited that the applicant's sons require a father figure as a role model and for emotional support. *Id.*

The applicant submitted a letter from a school counselor, [REDACTED] regarding one of her son's behavior and general mood at school. [REDACTED] reported that [REDACTED] was experiencing mood swings and sadness due to missing his father. *Letter from [REDACTED]* dated October 2, 2007. She explained that "[I]ately [Asahan] has been doing well and has many good friends, but he still gets depressed when he sees fathers and sons together, or when there is a family function at school." *Id.* at 1. She added that Asahan makes As and Bs at school and "he is a good student who makes good choices regarding behavior at school." *Id.*

The applicant submits a report to show that he has been treated for physical health problems in Bangladesh, including peptic ulcer disease and appendicitis. *Medical Document for the Applicant*, dated June 24, 2008.

Upon review, the applicant has not shown that a qualifying relative will suffer extreme hardship should the present waiver application be denied. The applicant has not asserted that his wife will experience difficulties should she join him in Bangladesh. In the absence of clear assertions from the applicant, the AAO may not speculate regarding challenges the applicant's family members may face. In proceedings regarding a waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

The applicant has not shown that his wife will suffer extreme hardship should she remain in the United States without him. The record contains references to financial difficulty the applicant's wife will experience should he remain in Bangladesh. The AAO has considered all financial documentation in the record. It is noted that the applicant has not supplemented the record with current evidence of his wife's income or expenses on appeal. While the AAO acknowledges that acting as a single parent for two young children involves considerable cost, the applicant has not shown that his wife faces unusual expenses that cannot be met with her current income. The AAO recognizes that the applicant's wife has responsibility for a mortgage payment of \$1056.08, and that her bi-weekly income was approximately \$875.51 as of September 2007. Yet, the AAO lacks an explanation of the applicant's wife's household, such as whether other income-earning individuals reside with her who contribute to the household expenses. It is further noted that the applicant's wife held a savings account with a balance of approximately \$35,000 as of October 4, 2007. The record shows that the applicant's wife sent funds to him on October 1, 2007, yet the applicant has not described his financial circumstances in Bangladesh or otherwise shown that he requires his wife's support. Accordingly, the applicant has not submitted sufficient evidence to establish that his wife is facing extreme financial circumstances in his absence.

The record contains documentation to show that the applicant's wife is enduring emotional hardship due to separation from him. The AAO has carefully examined the letter from [REDACTED]. However, it is brief and does not discuss the applicant's wife's symptoms or the impact they have on her daily life. [REDACTED] noted that the applicant's wife had been under his care for approximately seven months, yet as he is an internal medicine specialist the record does not support that he has been treating the applicant for mental health problems throughout that period. With the exception of a prescription for Zoloft and Klonopin, the record does not reflect any treatment the applicant's wife has received for mental health issues. The AAO acknowledges that the separation of spouses often creates significant emotional difficulty, and that the applicant's wife is enduring psychological hardship. Yet, the applicant has not provided sufficient explanation or evidence to show that her mental health challenges rise to an extreme level.

The applicant provided letters to show that his sons are experiencing hardship due to separation from him. It is evident that the applicant's sons have suffered consequences due to the applicant's absence, and that they would benefit from his presence in the United States. However, [REDACTED] did not describe uncommon or severe mental or physical health problems experienced by the applicant's sons. [REDACTED] reported that Ahasan has exhibited emotional difficulty in school, yet her letter reports that he continues to perform well academically and socially. Thus, the record does not present elements of hardship to the applicant's children that can be distinguished from the common challenges faced by children who live apart from a parent due to inadmissibility. It is further noted that the applicant has not established that hardship to his children is elevating his wife's difficulty to an extreme level.

The applicant presented a report to show that he was treated for health problems in Bangladesh. However, the applicant has not asserted or shown that he continues to have health problems, or that his health challenges are having an impact on his wife in the United States.

All elements of hardship to the applicant's wife and sons have been considered an aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will suffer extreme hardship should she remain in the United States without him. Accordingly, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to a qualifying relative, as required by both sections 212(a)(9)(B)(v) and 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In the present matter, the applicant has not met his burden to prove that he is eligible for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act. *See* Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.