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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: **SEP 08 2011** Office: NEW YORK (GARDEN CITY) FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

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
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated July 12, 2008.

On appeal, counsel contends the district director abused his discretion in denying the applicant's waiver application. Specifically, counsel contends the applicant established the requisite hardship, and submits additional evidence of hardship, including a psychological report and an affidavit from the applicant's wife.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on April 17, 2007; two affidavits from a letter from a psychologist; copies of tax returns and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 to the satisfaction of the Attorney General [Secretary] 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.

In this case, the record shows, and the applicant does not contest, that he entered the United States in approximately 1987 without inspection and remained until approximately 2007. The applicant was paroled into the United States on May 6, 2007. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until the proper filing of his first Application to Register Permanent Residence or Adjust Status (Form I-485) on April 26, 2001. Therefore, the applicant accrued unlawful presence of five years. He now seeks admission within ten years of his 2007 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

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 at 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.

In this case, the applicant’s wife, [REDACTED] states that she needs her husband to remain in the United States so that they can pay off their debts. She states she is a stay-at-home mother and that if she had to work, she would only make minimum wage due to the fact that she only has a high school education. She states she does not have any relatives who can help her with the bills. [REDACTED] fears that if she remained in the United States without her husband, she would never be able to save up enough money to visit him in Bangladesh. She states that her husband is the love of her life, that they cannot live without each other, and that all of the happiness in her life would leave with her husband. Moreover, [REDACTED] contends she has various, serious medical complications. She states she suffers from hypertension, which puts her at an increased risk for other complications. In addition, she states she is planning on giving birth to a baby and will need access to prenatal care, and that she will not be able to get routine medical care in Bangladesh. According to [REDACTED] in Bangladesh, the maternal mortality rate and infant mortality rate are very poor. Moreover, [REDACTED] states that she has a U.S. citizen son and that she wants him to have access to health care and the educational opportunities available in the United States. She contends that if she and her son relocated to Bangladesh, they would become very poor. She contends that her husband is from a very rural area in Bangladesh and that she would feel incredibly isolated there. She also contends that she cannot drink the water in Bangladesh and that it would be very difficult to find things she could eat because she has a high intolerance to spicy foods. Moreover, she states she is a modern Muslim who is living a free and independent life in the United States, which would not be possible in Bangladesh. *Affidavits from* [REDACTED] dated August 23, 2008, and May 1, 2008.

A letter from a psychologist states that the applicant and his wife have been together for many years and that it is not simply a marriage of convenience. The psychologist states the applicant is the sole financial provider for the family and that he works as a taxi driver and performs odd jobs. According to the psychologist, [REDACTED] used to work in cleaning, but began suffering from a joint-related medical condition that makes it difficult for her to do any manual labor. The psychologist contends the applicant takes care of her and helps her with her medical problems. [REDACTED] reported that she is unable to provide for herself or take care of many everyday, household tasks. *Letter from [REDACTED] [REDACTED] dated August 19, 2008.*

The AAO recognizes that [REDACTED] will suffer hardship upon the applicant's departure from the United States and is sympathetic to the family's circumstances. However, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the letter from the psychologist, the letter does not show that [REDACTED] situation is unique or atypical compared to others in similar circumstances. The letter does not diagnose [REDACTED] with any mental health problem and there is no suggestion in the record that she has a history of any mental health issues. To the extent the letter contends [REDACTED] has problems with her joints, [REDACTED] herself makes no mention of this problem and the record does not include a letter or other documentation from a physician or other health care professional addressing the diagnosis, prognosis, treatment, or severity of her purported condition.

Regarding the financial hardship claim, there is insufficient evidence showing that [REDACTED] hardship would be extreme. According to tax documents in the record, the couple owns two rental properties which earned a combined total of \$57,000 in rental income. *2006 Supplemental Income and Loss (Schedule E)*. Copies of bank account statements in the record indicate [REDACTED] has a balance of over \$11,000. In addition, the AAO notes that according to the Judgment of Divorce in the record, [REDACTED] has three children from a prior marriage which ended in April of 2004. According to the Judgment of Divorce, [REDACTED] was given custody of the children who are currently fifteen, twenty, and twenty-one years old. Although [REDACTED] mentions being a stay-at-home mother to one son, it is unclear why she fails to mention her other children and, significantly, [REDACTED] fails to mention how she supported her three children prior to marrying the applicant. Moreover, although the record contains documentation showing the couple's rent is \$800 per month, there is no other documentation addressing [REDACTED] regular, monthly expenses. Although the AAO does not doubt that [REDACTED] will suffer some financial hardship, without more detailed information addressing the couple's total assets and monthly expenses, there is insufficient evidence in the record to determine the extent of her financial hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if she were to return to Bangladesh to be with her husband. The record shows that [REDACTED] is currently forty-three years old. The record further shows that she was born in Bangladesh, and that at least one of her children was also born in Bangladesh. In addition, [REDACTED] parents continue to live in Bangladesh. *Biographic Information form (Form G-325A)*, dated July 26, 2007. She does not claim that she, or any of her children, suffer from any medical or mental health condition that would make their readjustment to living in Bangladesh any more difficult than would normally be expected. To the extent [REDACTED]

contends she wants her son to have the health care and educational opportunities available in the United States, hardship to the applicant's children can be considered only insofar as it results in hardship to [REDACTED] the only qualifying relative in this case. There is insufficient evidence in the record to show that any difficulty her children may experience will cause extreme hardship to [REDACTED]. With respect to the depressed economic situation in Bangladesh and [REDACTED] contention that she will have to drink bottled water and does not tolerate spicy foods, the AAO acknowledges these hardships. Nonetheless, considering all of the evidence in the aggregate, the record does not show that [REDACTED] relocation to Bangladesh would be any more difficult than would normally be expected under the circumstances. In sum, the record does not show that [REDACTED] hardship would be extreme or that her situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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 proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.