



U.S. Citizenship
and Immigration
Services

tlc

DATE: **DEC 12 2012** OFFICE: BANGKOK

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 and seeking readmission within 10 years of his last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative who seeks a waiver of inadmissibility in order to reside in the United States with his mother and father.

The District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The District Director denied the application accordingly. *See Decision of the District Director*, dated August 8, 2011.

On appeal, counsel for the applicant asserts that the applicant's mother needs the applicant in the United States to assist with her medical care. Counsel further asserts that the applicant's mother cannot relocate to Bangladesh because she will not receive the same quality of care.

In support of the waiver application and appeal, the applicant submitted a letter from a psychologist concerning the applicant's mother, an affidavit from the applicant, affidavits from the applicant's parents, a letter from the applicant's mother's physician, a letter of support, and identity documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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.

....

- (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant entered the United States without admission or parole in 1993 and filed a Form I-589 Request for Asylum in the United States on March 4, 1994. The applicant subsequently withdrew his request for asylum and accrued unlawful presence in the United States from August 21, 2006 until his departure on May 2, 2010. The applicant accrued over one year of unlawful presence in the United States, and he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's parents. 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*, 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-I-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.

The record reflects that the applicant is a 48 year-old native and citizen of Bangladesh. The applicant’s mother is a 71 year-old native of Bangladesh and lawful permanent resident of the United States. The applicant’s father is a 75 year-old native of Bangladesh and citizen of the United States. The applicant is currently residing in Bangladesh and the applicant’s mother and father are residing in Baltimore, Maryland.

Counsel for the applicant asserts that the applicant’s mother needs the applicant in the United States because she requires his assistance in caring for her medical conditions. Counsel contends that the applicant’s mother depends on the emotional support and physical care provided by the applicant. The record contains a letter from the applicant’s mother’s physician stating that he is treating the applicant’s mother for diabetes, hypertension, hypothyroidism, osteoarthritis, osteopenia, hypercholesterolemia, anemia, and diabetic neuropathy. The physician’s letter further states that the applicant’s mother’s mental and physical health are extremely fragile and that she requires constant assistance in her daily activities and medical care. The applicant’s mother’s physician recommends that the applicant’s mother have somebody by her side at all times. In addition, a letter from a psychologist states that the applicant’s mother is exhibiting cognitive deficits consistent with the early stages of dementia.

The record reflects that the applicant's mother has two other children besides the applicant residing in the United States. However, the applicant's mother asserts that when the applicant was in the United States he would drive her around for all of her errands and medical appointments, due to her inability to drive. The applicant's mother also asserts that she relied upon the applicant to remind her to take her medication, as she would otherwise forget. The applicant's mother contends that her daughter lives in North Carolina and that her son does not have sufficient time to care for her because he works full time and has two children in his family. According to the applicant's mother, the applicant's brother had to take leave from his job in order to assist her, but was still not able to allot the amount of time that she requires in her condition.

The applicant's mother also asserts that she and her husband relied upon the applicant's financial assistance to help pay her for expensive medications that are not fully covered by insurance. It is noted that the record reflects that the applicant was employed while he resided in the United States. In the aggregate, there is sufficient evidence in the record to find that the applicant's mother is suffering from a level of hardship beyond the common results of inadmissibility or separation from her.

Counsel for the applicant asserts that the applicant's mother cannot relocate to Bangladesh because she would receive a lower level of medical care for her ailments. Counsel also asserts that the applicant's mother would not be able to obtain insurance in Bangladesh due to her pre-existing conditions. It is noted that the applicant's mother is not employed and that her husband provides her financial support through his employment in the United States. The applicant's mother further asserts that she receives medical insurance through her husband in the United States. The record reflects that the applicant's mother has two children residing in the United States and she would have to leave them behind, in addition to her medical insurance benefits, if she relocated to Bangladesh. It is noted that the Department of State Country Specific Information for Bangladesh indicates that the general level of sanitation and health care in Bangladesh is far below U.S. standards. It is also noted that relocating to Bangladesh would interrupt the continuity of the applicant's mother's care in the United States, as she submitted a letter from a physician that she has been seeing since 2001. In this case, the record contains sufficient evidence to show that the hardships faced by the applicant's mother, in the aggregate, would rise to the level of extreme hardship if she relocated to Bangladesh.

Considered in the aggregate, the applicant has established that his mother would face extreme hardship if her 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-Moralez*, 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 her 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.

The AAO notes 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-Moralez*, 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-Moralez at 300.

In *Matter of Mendez-Moralez*, 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, 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.

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 include the extreme hardship the applicant's mother would experience whether she remained in the United States, separated from the applicant, or accompanied the applicant in Bangladesh, as well as hardship to the applicant's U.S. citizen and lawful permanent resident relatives, and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter include the applicant's unlawful presence in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.