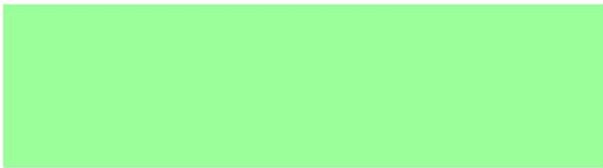




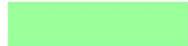
U.S. Citizenship
and Immigration
Services

(b)(6)

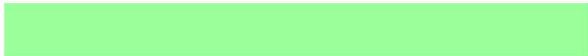


Date: OCT 07 2013 Office: BANGKOK, THAILAND

FILE:

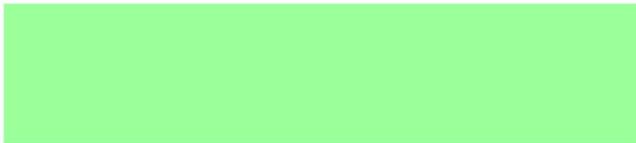


IN RE: Applicant:



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 (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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand. The applicant, through counsel, appealed the District Director’s decision to the Administrative Appeals Office (AAO). On appeal, the AAO remanded the application for a determination on the applicant’s inadmissibility under section 212(a)(6)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(B). The District Director determined the applicant is no longer inadmissible under section 212(a)(6)(B) of the Act and certified the denial to the AAO. The appeal will be sustained.

The applicant is a native and citizen of Bangladesh. He 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 one year or more and seeking admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(9)(B)(v), in order to reside in the United States with his wife and children.

The District Director determined the applicant had not established extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated March 4, 2011.

On appeal, counsel asserts U.S. Citizenship and Immigration Services (USCIS) correctly determined the applicant’s spouse would suffer extreme hardship upon relocation to Bangladesh but erred in determining she would not suffer extreme hardship upon separation and that the applicant does not warrant a favorable exercise of discretion, given the totality of the supporting documentary evidence and the applicable law. *See Form I-290B, Notice of Appeal or Motion*, dated March 28, 2011.

The record includes, but is not limited to: briefs, motions, and correspondence from current and previous counsel; letters of support; identity, medical, employment, and financial documents; an Internet article; and documents on conditions in Bangladesh. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

...

(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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record reflects the applicant entered the United States without inspection by U.S. immigration officials on June 17, 2000, and remained until his removal on June 10, 2008. The record also reflects the applicant has remained outside the United States to date. The applicant accrued unlawful presence from June 17, 2000, until June 10, 2008, a period in excess of one year. Accordingly, the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. On appeal, the applicant does not contest this finding; rather, he seeks a waiver under section 212(a)(9)(B)(v) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated 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 of Immigration Appeals (BIA) 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. at 565. The factors include the presence of a lawful permanent resident or U.S. 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 BIA 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 BIA 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; *In re 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 BIA 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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 v. I.N.S.*, 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, counsel asserts that USCIS must give “considerable, if not predominant, weight to the hardship of separation itself,” particularly because the applicant’s case involves the separation of spouses from one another and minor children from a parent. He also contends that the applicant’s spouse and their daughters continue to suffer extreme hardship in the applicant’s absence. Specifically, the applicant’s spouse has several medical conditions, including high blood pressure, frequent panic attacks, and severe migraines; it has been difficult for her to receive appropriate medical treatment due to her inability to leave work, because any leave she takes is unpaid; she was healthy prior to the applicant’s removal and she now needs prescription medications; her medical conditions raise “a very strong possibility” of more severe medical complications, such as heart attack and stroke; her bills exceed her income, resulting in her receiving “shut off notices” for her utilities and having difficulty feeding her family; her family members are unable to assist her, as they also are experiencing financial difficulties due to Hurricane Katrina; she is unable to afford childcare and is forced to take their children with her to work when they are not in school; she is suffering from “tremendous grief and a great amount of mental

stress” due to her difficult financial situation and having to raise their children without the applicant; their children miss the applicant very much and their grades “have suffered” in his absence; and a father’s absence presents “numerous damaging physical and psychological effects” on children. The applicant’s spouse further contends: she and their children struggle daily with grief and mental and financial stress in the applicant’s absence; she relies “heavily upon” her parents for emotional support, and she maintains a close relationship with her other family members; she cannot afford her expenses on her salary alone, and she has borrowed money to feed her family; her net monthly income has decreased due to mandatory furloughs, but her expenditures continue to rise; the applicant would be able to secure employment in the United States to assist her with her medical recovery and financial responsibilities; and the travel costs to Bangladesh to visit the applicant are too expensive.

The record is sufficient to establish the applicant’s spouse has experienced hardship in the applicant’s absence. The record includes a letter dated October 6, 2010, indicating the applicant’s spouse is currently under care and treatment for anxiety, panic attacks, and headaches related to the applicant’s removal. Also, the record includes an employment letter dated October 25, 2010, indicating the applicant’s spouse has been employed with the [REDACTED] since December 17, 2007, and currently works as an office assistant, earning an annual salary of \$21,975. The record further includes her earnings statements, indicating a periodic decrease in her salary due to furloughs. Additionally, the record includes title loans and billing statements demonstrating the applicant’s spouse has been in arrears for some of her accounts and is having serious difficulty meeting her financial obligations. Although the record does not include a discussion of her health prior to the applicant’s removal or evidence of their children’s current mental health and the impact their mental health is having on her as the applicant’s only qualifying relative, the AAO finds, in the aggregate, the applicant’s spouse would suffer extreme hardship upon separation from the applicant.

Further, in his previous decision, the District Director determined the applicant’s spouse would experience extreme hardship upon relocation to Bangladesh due to her strong familial and community ties to the United States, her lack of familial and social ties to Bangladesh, and the general social conditions there along with the normal hardships associated with relocation. The applicant’s spouse’s circumstances have not improved since the District Director’s previous decision. Accordingly, the record continues to reflect the cumulative effect of the hardship the applicant’s spouse would experience upon relocation due to the applicant’s inadmissibility rises to the level of extreme.

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 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.

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:

(b)(6)

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 stated 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.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse, familial ties to the United States, and the absence of a criminal record. The unfavorable factors include the applicant's initial entry without inspection, a period of unauthorized presence, and his removal from the United States pursuant to an order issued *in absentia*.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds 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 appeal is sustained.