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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: APR 27 2011 Office: INDIANAPOLIS, IN FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

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, Indianapolis, Indiana. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and previous decisions of the district director and AAO will be affirmed.

The applicant, a native and citizen of Jamaica, was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and stepchild and his lawful permanent resident mother.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated August 7, 2006. The AAO found that the applicant's mother would not experience extreme hardship upon relocation to Jamaica or remaining in the United States; and that the applicant's spouse and stepchild would experience extreme hardship upon relocation to Jamaica, but not if they remain in the United States. *AAO Decision*, dated December 2, 2008. The AAO dismissed the appeal accordingly.

On motion, counsel mentions that the inadmissibility bar is permanent; he discusses the sanctity of marriage; he refers to the universal declaration of human rights which mentions the right to found a family; and he states that immigration law is about preserving the family. *Brief in Support of Motion*, undated.

The record includes a brief in support of counsel's motion to reopen and reconsider and a statement from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

. . . .

> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

Regarding the applicant's ground of inadmissibility, the record reflects the commission of a crime involving moral turpitude. In March 2006, the applicant pled guilty to the offense of Fraud on Financial Institutions, in violation of section 35-43-5-8 of the Indiana Criminal Code, based on a September 2004 incident. The applicant's sentence was suspended and he was placed on probation for one year. As the aforementioned crime was committed after the applicant's eighteenth birthday and the maximum penalty for this type of crime is eight years imprisonment, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO notes that inadmissibility is conceded on motion.

A waiver of inadmissibility under section 212(h) 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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse, mother and stepchild are the only qualifying relatives 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-Moralez,* 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 the applicant's qualifying relatives, 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.

In his motion, counsel only addresses hardship to the applicant's spouse and stepchild. As such, the AAO will not address hardship to the applicant's mother. The AAO previously found that the applicant's spouse and stepchild would experience hardship upon relocation to Jamaica. As such, it

will address hardship to them upon remaining in the United States. Counsel states that the applicant's stepdaughter looks at the applicant as her father. *Brief in Support of Appeal*, at 3, undated. The applicant's spouse states that his stepdaughter will miss him a lot and he has been the only father figure in her life. *Applicant's Spouse's Statement*, at 2, undated. The record included an article on the importance of fatherhood. However, the record does not establish that the applicant is the only father figure as the applicant's spouse stated that the biological father would not allow their daughter to be taken to Jamaica.

The applicant's spouse states:

> The emotional hardship that [redacted] [the applicant's spouse] will endure if this waiver application is denied will be nothing short of devastating. Since 2004, [redacted] has been going through a lot psychologically....Lately she has been suffering from severe psychological problems caused by stress. She have [sic] been thinking so much about the thought of being separated from her husband is psychologically and emotionally traumatizing to her....Because of this [redacted] is currently unable to start school and unable to focus on the general everyday activates [sic]... [redacted] feels suicidal at times and wants to go see a psychologist, but because of all their bills and debt they are unable to seek professional help. [redacted] husband [redacted] [the applicant] is the only one who keeps her going everyday and encourages her to hold on....
>
> Because [redacted] is under severe stress about losing her husband, she will be at more risk of diseases and the body's ability to fight of [sic] those diseases.
>
> [redacted] also has been suffering from aviophobia, also known as fear of flying....Traveling back and fourth [sic] to Jamaica would cause a severe problem in the future for her health....
>
> [redacted] financial status has been impacted severely by this hardship. If she is forced to live without her husband it would be impossible for her to continue to support herself... [redacted] just recently lost her job and would end up being homeless if it wasn't for her husband's support from his business....
>
> Children reared in single-parent families may suffer from greater depression and emotional distress, may exhibit greater behavioral and learning difficulties in school...

> [redacted] plan[s] to join him in the fall of 2006, majoring in Nursing. By breaking up [redacted]['s] family, she would not be able to concentrate on her studies...Along with travel expense[s], debts and stress it will be too much for her to handle.

Letter from [redacted] dated June 30, 2006.

Although the applicant's spouse references the emotional hardship she will suffer if the applicant is removed from the United States, and notes the fact that she is suffering from numerous mental health conditions, including aviophobia and suicidal ideations, no documentation has been provided by a licensed mental health professional to establish the applicant's spouse's current mental health situation, its gravity, its short and long-term treatment plan, and what, if any, specific impact the applicant's removal would have on his spouse, and by extension, his stepchild.

In regard to financial issues, the record includes a collection notice from a hospital for $1083.58, bills for immigration fees, an electric bill with a late payment, a college enrollment invoice for the applicant with a late fee, and a bank statement reflecting a balance of negative $70.08. These financial documents are dated in 2006, and though the motion was filed on January 2, 2009, the applicant has not supplemented the record with recent evidence to support his family's claimed economic situation. Accordingly, insufficient documentary evidence has been provided to establish the applicant's and his family's financial situation, including income and expenses, assets and liabilities. The applicant's spouse references her financial dependence on the applicant but has not established what kind of income the applicant brings to the household, nor has she documented that she is unable to obtain gainful employment to support herself and her child.

On motion, the applicant's spouse states that she cannot have children if separated. *Applicant's Spouse's Second Statement*, undated. Although it is not clear whether the applicant's spouse's statement is accurate, as she may be able to visit the applicant, the AAO notes the inherent hardships related to separation. Counsel mentions that the inadmissibility bar is permanent; he discusses the sanctity of marriage in the United States; he refers to the universal declaration of human rights which mentions the right to found a family and he states that the underlying intention of U.S. immigration law is preservation of the family unit. *Brief in Support of Motion.* The AAO notes these general principles, however, the relevant analysis when one is found inadmissible for a crime involving moral turpitude involves the possibility of separation from a spouse.

The AAO has reviewed the previously submitted evidence, and the new evidence and contentions made on motion. The AAO finds that the record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

Although the applicant has established that his U.S. citizen spouse and child would suffer extreme hardship were they to relocate to Jamaica, it has not been established that they would suffer extreme hardship were they to remain in the United States while the applicant relocated abroad. 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 under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. The previous decisions of the district director and the AAO will be affirmed.

ORDER: The motion is granted and the previous decisions of the district director and the AAO are affirmed.