

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



PUBLIC COPY



tt2

FILE: [REDACTED] Office: TAMPA, FL

Date: MAY 02 2011

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:



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,

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Poland. The director stated that the applicant was inadmissible under section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having been convicted of committing crimes involving moral turpitude. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant first entered the United States in 1986 on a visitor visa. Counsel indicates that the adjudications officer who conducted the applicant's interview failed to review the applicant's complete file prior to the interview, provide the applicant with an opportunity to provide additional documentation, issue a notice of intent to deny, or conduct a thorough interview. Counsel asserts that the adjudications officer made an arbitrary decision by disregarding significant aspects of the applicant's hardship claim.

Counsel indicates that the applicant's U.S. citizen daughters, [REDACTED] will suffer extreme hardship if the waiver is denied and the applicant returns to Poland. Counsel asserts that [REDACTED] has been in the United States for 21 years, owns real estate, and is employed. Counsel avers that the applicant is taken care of by her daughters because of her age. Counsel asserts that the director failed to consider the age, health, and employability of the applicant and the financial impact to the applicant's daughters if the applicant leaves the United States. Counsel maintains that except for her two older sisters who have failing health, the applicant does not have any ties to Poland. Counsel states that without the care and supervision of her daughters, the applicant will not be able to live and support herself on her own. Counsel indicates that [REDACTED] has resided in the United States since 1980. Counsel states that [REDACTED] is divorced and based on her custody agreement is required to remain in the United States. Further, counsel states that [REDACTED] will be uprooted, leaving her children and sister if she joins her mother to live in Poland.

We will first address the finding of inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing crimes involving moral turpitude.

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

- (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.

We find that the record reflects that the applicant has nine shoplifting convictions, a theft conviction, and two petit theft convictions, and that all of the crimes were committed in the United States. The most recent conviction for petit theft occurred on July 12, 2004, and the order withholding

adjudication reflects that the applicant pled guilty to petit theft and was ordered to pay a fine and/or court costs. Counsel does not dispute that the crimes for which the applicant was convicted involve moral turpitude.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in this case are the applicant's U.S. citizen daughters. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 are possible 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 to be taken is difficult, and it 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 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*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

In rendering this decision, the AAO will consider all of the evidence in the record.

We note that [REDACTED] states in the affidavit dated July 20, 2007, that she is a self-employed housekeeper and supports her 73-year-old mother. She indicates that her mother has insomnia and cannot drive or cook. [REDACTED] that she will be forced to sell her house if she moves, and is in the process of buying a second home.

[REDACTED] conveys in the affidavit dated July 20, 2007, that she also takes care of her mother, and will not be able to remain in the United States and financially support her mother in Poland. She avers that there are no family members to take care of her mother in Poland.

Family separation 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 type of familial 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 otherwise 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 familial relationship involved, the hardship resulting from family separation is 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. Indeed, the specific facts of a case may dictate that even the separation of a spouse and children from an applicant does not constitute extreme hardship. In *Matter of Ngai*, for instance, the Board did not find extreme hardship because the claims of hardship conflicted with evidence in the record and because the applicant and his spouse had been voluntarily separated from one another for 28 years. 19 I&N Dec. at 247. 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.

The stated hardship factor in the instant case is that of the emotional impact to the applicant's daughters if they remain in the United States without the applicant. The applicant's daughters assert that they take care of and financially support their mother, and would not be able to financially support their mother if she lives in Poland. However, there is no evidence in the record demonstrating that the applicant requires financial support or to be taken care of by her daughters because of a serious emotional or health problem. Moreover, no documentation has been provided to demonstrate they will be unable to financially assist their mother from the United States. In sum, when all of the asserted hardship factors are considered in the aggregate, the AAO finds that they fail to establish that the hardship that the applicant's daughters will experience as a result of separation is extreme.

The asserted hardship factors associated with the applicant's daughters joining their mother to live in Poland are selling her home [REDACTED], the custody agreement restrictions, few family ties to Poland, and having to leave the United States after living here for many years. We note that the Final Judgment of Dissolution of Marriage reflects that [REDACTED] has primary custody of her daughter, who is now 11 years old, and her husband has secondary custody and specified visitation rights. Moreover, the judgment provides that [REDACTED] "shall not permanently relocate with the minor child outside of the state of Florida without prior written permission of the Husband or a court order." As previously stated, substantial weight is given to the separation of a parent and minor child in the hardship analysis. Thus, if [REDACTED] joined her mother to live in Poland and was not able to take her minor child with her, coupled with [REDACTED] having to leave her life in the United States after having lived her for 30 years, we find that [REDACTED] would experience extreme hardship if she joins the applicant to live in Poland.

The applicant has demonstrated extreme hardship to her U.S. citizen daughter if she joined the applicant to live in Poland. However, the applicant has not established extreme hardship if her daughter remained in the United States without her. Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) 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 met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.