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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

[redacted]

Date: AUG 0 1 2012 Office: MIAMI, FLORIDA 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director, Miami, 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 Panama who was found to be inadmissible 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 crimes involving moral turpitude. The director stated that the applicant seeks 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 his 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 challenges the director's finding that the applicant's wife and children will not experience extreme hardship if the applicant is removed from the United States. Counsel asserts that the applicant's wife and four children, who are 22, 20, 9, and 4 years old, have a close relationship with the applicant, depending on him financially and emotionally. Counsel observes that the applicant's wife, who has been with the applicant since 1997, married the applicant in 2004. Counsel argues that separation from the applicant will be emotionally devastating to the applicant's minor children and wife and points to an evaluation by [redacted] to demonstrate the strong relationship the applicant has with his family. Counsel declares that the applicant's wife's eye disease, Keratoconus, necessitates that the applicant's wife wear special corrective lenses and depend on the applicant for many aspects of the care of their minor children, such as driving them, helping with homework, and cooking their meals. Counsel argues that the applicant's wife will not be able to have comparable eye treatment in Panama that she now receives at the [redacted]. Counsel states that the applicant and his wife have joint debt and ownership of real estate in the United States, and that the applicant's wife will not be able to support herself and their minor children without the applicant's financial contribution.

We will first address the finding of inadmissibility.

The applicant was found to be inadmissible for having been convicted of a crime 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.

On July 12, 2002, the applicant pled guilty to and was convicted of grand theft in the third degree, fraudulent use of a credit card, forgery (credit card receipt), and possession of a forged counterfeit credit card in Florida. The judge sentenced the applicant to serve, concurrently, two years of probation for each crime.

The director found that the applicant was convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

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 -
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> . . .
>
> (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. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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-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 rendering this decision, the AAO will consider all of the evidence in the record.

Counsel asserts that the applicant's U.S. citizen wife and U.S. citizen daughter and lawful permanent resident son will experience emotional and financial hardship if they remain in the United States without the applicant. The evidence in the record of the applicant's wife letter dated September 27, 2009 and the evaluation by [redacted] dated September 18, 2009 and May 4, 2010 are consistent with the assertion of emotional hardship to the applicant's wife and two young children if separated from the applicant. The applicant's wife stated in the letter that her husband was very involved in the lives of their minor children. [redacted]z stated that the applicant's son conveyed spending time with the applicant such as playing sports, watching movies, helping with homework, and being driven to and from school. [redacted] stated that the applicant's minor daughter was emotional when asked how she would feel if her father was not around for a period of time. The record shows that the applicant's daughter was born on January 7, 2005 and his son was born on October 30, 1999. In view of the tender age of the applicant's son and daughter and their close bond with their father, we acknowledge the extreme hardship they would experience in living in the United States while their father lived in Panama.

As to joining the applicant to live in Panama, the asserted hardships are lack of comparable eye care for the applicant's wife, and the negative impact that lack of language proficiency will have on the academic progress of the applicant's minor children and their loss of friends and extracurricular activities. The applicant's wife stated in the letter dated May 5, 2010 that problems with her eyes manifested when she was in high school and that in the United States she had rigid contact lenses fitted to her eyes which has enabled her to see clearly. The applicant's wife stated that her doctor told her that for some patients with Keratoconus, rigid contact lenses or other therapies will no longer provide acceptable vision, and if that happens to her, she will require a cornea transplant. Although counsel asserts that the applicant's wife will not have comparable eye care in Panama to what she now has in the United States, the applicant has not submitted any evidence corroborating this assertion. There is also no independent evidence to support his wife's claim that she will require a cornea transplant in the future; the applicant's wife has stated that her vision is now clear. Dr. Schwartz stated that it would be extreme psychological hardship to the applicant's children if they moved to Panama as their primary language is English, they would fall behind academically due to their lack of language proficiency, and would miss their friends and extracurricular activities in the United States. However, no evidence has been provided establishing that the applicant and his wife will not be able to afford a tutor to assist in their son and daughter's transition to the educational system in Panama or to have their children attend a school in Panama where instruction is in the English language. The record reflects that [redacted]tated that the applicant's wife earned a bachelor's degree in business from a private college in Panama, and worked as a loan specialist at banks in the United States. The applicant's Biographic Information (Form G-325) shows that the applicant was self-employed in sales in Panama, and the Form G-325 indicates that his mother-in-law lives in Panama. Consequently, the evidence does not demonstrate that the applicant and his wife will lack the economic and social means to adequately care for their children. Thus, when the asserted hardship factors are considered together, they fail to establish that the applicant's children will experience extreme hardship in relocating to Panama.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

We note that the director indicated in the denial that the applicant did not reveal in the application for renewal of a nonimmigrant visa filed on August 21, 1998 that he had been arrested or convicted of a crime, and therefore misrepresented a material fact so as to obtain an immigrant benefit. However, the submitted criminal records reflect that for the crimes charged prior to August 21, 1998, no action was taken by the prosecutor and the applicant does not have any convictions. Thus, the applicant's failure to disclose these arrests was not material because the criminal charges alone would not have rendered the applicant inadmissible under any provision of the Act.

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) the Act, 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.