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

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 2 8 2013 Office: OAKLAND PARK

IN RE:

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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Michael Shumway

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida, The field office director's decision was appealed to the Administrative Appeals Office (AAO) and the appeal was dismissed. The matter is now before the AAO on a motion to reconsider reopen. The motion will be granted and the AAO's previous decision is affirmed.

The applicant is a native of Jamaica and a citizen of Jamaica and Canada 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 applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). In a decision, dated April 9, 2009, the field office director concluded that the applicant had failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel declared that the applicant's husband was suicidal and had undergone treatment for depression that was related to the applicant's wife's inadmissibility to the United States. Counsel also stated that the applicant's husband's mother died from cancer two years ago and that his nephew was murdered. Counsel maintained that the applicant's husband would experience extreme hardship if the waiver was denied.

In our decision, dated February 27, 2012, we found that the applicant had failed to demonstrate that her husband would experience extreme hardship if he remained in the United States without her. Additionally, the applicant had not submitted evidence to demonstrate that her husband would experience extreme hardship if he joined her to live in Canada and if he relocated to Jamaica. We dismissed the appeal accordingly.

On motion, counsel states that he is submitting new evidence to address the issues cited by the AAO in its decision. Counsel states that he is also submitting new evidence that the applicant's spouse is rehabilitated. The new evidence submitted on motion includes: counsel's brief, two affidavits from the applicant's spouse, one statement from the applicant, and four letters attesting to the applicant's rehabilitation.

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.

The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of a conviction in 2002 in Canada for fraud over $5,000 and convictions in 2005, in Florida, for unauthorized possession of identification card/driver's license, uttering a forged

instrument, and resisting without violence. The applicant has not disputed this finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

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

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --
>
> (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (iii) the alien has been rehabilitated; or
>
> (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 . . .; and
>
> (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

We note the applicant's assertions regarding the events which led to her 2002 conviction taking place more than 15 years ago. The record indicates that the events which led to this conviction occurred from November 29, 1993 to August 1, 1998. However, the applicant's inadmissibility cannot be waived completely under section 212(h)(1)(A) of the Act because she continues to have a conviction for a crime involving moral turpitude stemming from events which occurred on or around July 20, 2004.

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) and (II) 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 applicant's U.S. citizen spouse is the only qualifying relative in this case. 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 v. I.N.S., 138 F.3d 1292 (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, the applicant's spouse claimed that the applicant's inadmissibility would cause him extreme emotional hardship. The applicant's spouse stated that he had anxiety, depression, and suicidal thoughts due to concern about his wife's immigration problems. He also stated that his doctor had placed him on suicide watch and he was diagnosed with Bipolar syndrome. Finally, the applicant's spouse stated that his mother recently died and his nephew was murdered, leaving his wife as his only close family member. We found that medical letters from the applicant's spouse's treating doctors, [redacted] were consistent with these assertions. In addition, these letters indicated that the applicant's spouse suffered from alcohol dependency and panic attacks.

However, we did not find that the record established the applicant's spouse would suffer extreme hardship as a result of separation because the record included a police report, dated May 8, 2008, indicating that the applicant had been abusive toward her spouse and that she and her spouse were both seeing other people. The record indicated that the applicant's husband brought criminal charges against the applicant and a judge issued a no contact order. We did also note that one day after the applicant's arrest, her spouse requested, in a letter dated May 9, 2008, that the court dismiss the battery charge against the applicant and lift the no contact order. Because of this inconsistency in the record as to the true nature of the applicant's relationship with her spouse, we did not find that he would suffer extreme hardship as a result of separation. Additionally, we found that the applicant had not submitted evidence to demonstrate that her husband would experience extreme hardship if he joined her to live in Canada and if he joined her to live in Jamaica.

The evidence submitted on motion indicates through statements from the applicant and her spouse that the domestic violence incident in 2008 was an isolated incident and that the events were not portrayed accurately because of the applicant's spouse's mental health problems. The applicant's spouse asserts that he relies on the applicant emotionally and financially and would suffer extreme hardship if he were separated. Thus, we now find that the applicant has shown that he would suffer extreme hardship as a result of separation.

Despite this finding of hardship upon separation, we cannot find that the applicant's spouse will suffer extreme hardship as a result of her inadmissibility, because the current record fails to show that the applicant's spouse will suffer extreme hardship upon relocation. The record indicates that the applicant's spouse has no ties in the United States, other than the applicant. The record also fails to show that the applicant's spouse would suffer extreme hardships as a result of relocating to either Jamaica or Canada. Thus, 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 section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the motion is granted and the AAO's previous decision is affirmed.

ORDER: The motion is granted and the AAO's previous decision is affirmed.