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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 05 2014 Office: OAKLAND PARK, FL

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) of the Immigration and Nationality Act (the 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park, Florida, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to 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 does not contest the inadmissibility, and seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* August 6, 2011. On appeal, the AAO found the applicant had failed to show that failure to grant a waiver would impose extreme hardship on a qualifying relative. *Decision of the AAO,* March 9, 2013.

On motion, counsel asserts that the AAO erred in not finding extreme hardship to the applicant's husband or child due to the child's medical condition, safety concerns, loss of dependent survivor benefits, and lack of family ties in the destination country if the applicant is unable to remain in the United States. In support of the motion, the applicant's counsel provides a brief, medical evidence not previously available, and country condition information. The record also includes: supporting documents submitted with various immigration applications and petitions, a hardship statement, a psychological evaluation, employment and income tax records, financial information, criminal record information, and photographs. The entire record was reviewed and considered in rendering this decision.

We previously noted that the record shows the applicant was convicted on August 1, 2008 in [redacted] for Grand Theft in the Third Degree (of property valued at between $300 and $5,000), in violation of Florida Statutes § Fl. 812.014(2)(C)(1), for her conduct on June 18, 2008. She was sentenced to 18 months of probation and monetary costs. The applicant does not dispute that she is inadmissible pursuant to section 212(a)(2)(A) of the Act and requires a waiver under section 212(h).

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 –
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that–
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> (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
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> (iii) the alien has been rehabilitated; or
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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 . . .; and
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> (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.

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 or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's U.S. citizen son and husband are qualifying relatives. 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).

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.

The record contains a psychological report regarding the emotional impact on both the applicant's husband and her son if the applicant is unable to remain in the United States. The applicant and her spouse are jointly raising her six-year-old child from a prior relationship. The applicant's husband indicates being devoted to his stepchild and told the psychologist that the stepson and the applicant are as much a necessity for him as he is for them. *See Psychological Evaluation,* September 6, 2011. He claims in his waiver statement to be unable to envision his life without them. The psychologist diagnoses the applicant's husband with reactive depression due to his wife's possible deportation and concludes that it would worsen if she moved away with his stepson because of the fondness he has developed for them, fears for their safety, and concerns for the adverse impact of his stepson's education and medical care overseas. He told the psychologist he had recently started having several migraines each month and was having trouble sleeping and his blood pressure had become elevated, but the record contains no medical

documentation of these conditions. There is no indication of any recommended treatment for the applicant's husband, no documentation he is being treated for medical problems stemming from his emotional condition, and no showing that his daily activities have been affected. No U.S. Department of State (DOS) Travel Warning for Jamaica is found among the 34 such country-specific warnings issued since May 2013, nor is there any indication that crime is a concern in the applicant's hometown of St. Thomas.[1]

Regarding financial hardship from separation, the record shows the applicant's husband is the family's main provider,[2] and he claims he could not afford supporting the applicant in Jamaica while paying his own living expenses here. On motion, the applicant offers no evidence showing her husband would be unable to provide some support to the applicant in Jamaica or that the applicant would be unable to find work there to help support herself. Nor has the record been supplemented to address other possible sources of economic help, such as family members remaining in Jamaica. Without information regarding the applicant's earnings contribution to household income here or her job prospects, living expenses, and available resources in her home country, the applicant is unable to show that her absence would make her husband unable to meet his financial obligations or that her return to Jamaica would impose additional expenses on her husband. The evidence does not establish that the economic challenges would rise beyond those normally associated with separation due to removal or inadmissibility.

The AAO notes that, although the applicant's U.S. citizen son would not be legally required to depart with the applicant, the applicant and her husband envision only the scenario in which she retains physical custody, rather than leave him with his stepfather and thus be separated from him herself. AS the applicant indicates that her son would accompany her to Jamaica, no hardship is claimed to result from separation of the applicant from her son.

Although recognizing that separation from the applicant would cause hardships for the applicant's husband, the AAO finds there is insufficient evidence that the cumulative effect of the emotional and financial hardships due to the applicant's inadmissibility would rise to the level of extreme. The AAO concludes based on the evidence provided that, were the applicant's husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer hardship beyond those problems normally associated with family separation.

We noted in our prior decision that, while neither the applicant nor her husband addressed directly issues regarding the applicant's husband relocating to Jamaica, the psychologist reports concerns he expressed about doing so. His main concern is loss of economic opportunity, but the record contains no documentary evidence addressing Jamaica's economy, his employment history in Jamaica, or job prospects. Although immigration records reflect that the applicant's husband immigrated nine years ago to live with his father, there is no documentation on record

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[1] Current DOS information notes that violent crime is a problem in parts of Kingston and Montego Bay – which are listed as places to be avoided -- but does not advise U.S. citizens to avoid traveling to Jamaica.

[2] The psychologist states that the applicant's husband said he was the family's sole provider until the applicant began working in January 2011, but the record contains no proof the applicant earned income or had a job.

regarding the whereabouts of his father, other relatives, or any U.S. tie besides employment. He also asserts fearing for the safety of the applicant and her son should they relocate. As noted previously, the safety concerns expressed by the applicant's husband are not supported by any DOS-issued Travel Warning, as claimed. The applicant's husband claims that if his stepson relocates, he would lose the state benefits to which he became entitled due to his biological father's death: WIC, social security, and health insurance. While the record shows that the applicant's son currently receives benefits related to his father's death, the evidence does not indicate which of these he would lose by relocating abroad. Nor is there any indication what financial impact the claimed loss of these benefits would have on the applicant's husband.

Counsel asserts that the applicant's son suffers from severe asthma and submits medical records to support this claim. The records consist of laboratory results and physician's "progress notes" for medical care. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on record is insufficient to establish, however, that the applicant's son suffers from a serious condition or that medical care is unavailable. The country condition information provided indicates that while medical care is more limited than in the United States, comprehensive but basic emergency services are offered in two major cities, one being within 15 miles of the applicant's birthplace. There is no indication that necessary medication is unavailable. Further, the medical records provided -- including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results -- were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's son. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

On motion, the AAO has again considered the cumulative impact of all hardships to the applicant's qualifying relatives due to relocation based on the augmented record. We have considered the economic, employment, and safety concerns of the applicant's husband about Jamaica as well as his U.S. ties and current employment here. For the applicant's son, we have considered his stepfather's concerns, including separation from a parent in the event that the stepfather does not relocate; educational, medical, and safety-related concerns; loss of survivor-related benefits he receives due to the death of his biological father; and availability of suitable care and treatment for asthma. The AAO finds the evidence, considered in the aggregate, insufficient to demonstrate that the applicant's U.S. citizen husband or son would suffer extreme hardship were they to relocate to Jamaica to be with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that either qualifying relative will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or parent is removed from the United States and/or refused

admission. Although the AAO is not insensitive to the situations of the applicant's husband and son, the record does not establish that the hardship they would face rises to the level of "extreme" as contemplated by statute and case law. Having again found the applicant statutorily ineligible for relief under the Act, 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, 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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.