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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]

H5

Date: NOV 17 2011 Office: BUFFALO FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Field Office Director, Buffalo, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guyana who attempted to procure entry to the United States in October 1999 and again in December 2000 by presenting fraudulent documentation. In addition, the record establishes that the applicant was convicted in the Schenectady County Court, State of New York, of the offense of Attempted Burglary in the 1st Degree: Dwelling with Explosives or Deadly Weapon and sentenced to four years in prison. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry to the United States on two separate occasions by fraud or willful misrepresentation, and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. Moreover, the field office director noted that the applicant's above-referenced conviction was for a violent or dangerous crime under section 212.7(d) of Title 8 of the Code of Federal Regulations and thus, the applicant must establish exceptional and extremely unusual hardship to a qualifying relative, a higher standard than extreme hardship. The applicant seeks a waiver of inadmissibility in order to be able to remain in the United States with his U.S. citizen mother.[1]

The field office director concluded 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 Field Office Director,* dated July 7, 2011.

In support of the appeal, the applicant submits the Form I-290B, Notice of Appeal, dated July 28, 2011. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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[1] Numerous references are made in regards to the applicant's purported step-father, [redacted] and the hardships he would encounter if the applicant was not granted a waiver of inadmissibility. Under section 101(b)(1)(b) of the Act, a stepchild is defined as a child that had not reached the age of eighteen years at the time the marriage creating the status of step-child occurred. No documentation has been provided establishing when the applicant's mother married [redacted] The AAO notes that on the Form I-130, Petition for Alien Relative, filed in April 2001 when the applicant was 23 years old, his mother listed herself as unmarried. The only spouse referenced was the applicant's mother's prior husband [redacted] the applicant's biological father, who is deceased. As such, hardship to [redacted] can be considered only insofar as it results in hardship to a qualifying relative, in this case, the applicant's mother.

. . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(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:

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (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 . . . .

(2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Waivers of inadmissibility under section 212(a)(6)(C)(i) and 212(h) of the Act are dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative. The applicant's U.S. citizen mother is the only qualifying relative 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).

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 applicant's U.S. citizen mother contends that she will experience emotional, physical and financial hardship were she to remain in the United States while her son relocates abroad as a result of his inadmissibility. She asserts that her U.S. citizen husband suffered a severe stroke and prior to going to prison, her son helped her with their daily needs and provided financial support. Now, since her son's imprisonment, the applicant's mother contends that she has to take the bus to two different jobs, working from early in the morning until around 11:00 PM each night, and such a predicament is causing her hardship. She further explains that her husband is unable to move around easily and without her son's daily presence, it is very hard for her to take her husband to medical appointments and care for him on a daily basis. *Letter from* [redacted], dated April 29, 2011.

In support, a letter has been provided from the applicant's teenage sister, explaining that their parents are very ill, her mother is working two jobs to make ends meet and without her brother's presence and financial support, her parents will suffer extreme hardship. He contends that they will lose their home and everything they have. *Letter from* [redacted]. In addition, a letter has been provided from [redacted] establishing that the applicant's mother suffers from uncontrolled Diabetes Mellitus, Hypertension and Hyperlipidemia, is feeling stressed and overwhelmed, and as a result of a recent accident at work, has chronic head and shoulder pain. The letter further establishes that the applicant's assistance would be an asset to her care. The letter provided also notes that the applicant's mother's husband is paralyzed and in a wheelchair. *Letter from* [redacted], dated April 27, 2011. Moreover, a letter has been provided from the applicant's mother's husband's treating physician, confirming that he has multiple comorbidities, including poorly controlled Diabetes Mellitus, Hypertension, Hypothyroidism and Hyperlipidemia and recently had a stroke with permanent neurological deficit, which significantly impairs his daily activities. *Letter from* [redacted]. Further, documentation has been provided establishing that the applicant was employed and living with his mother prior to imprisonment. Finally, numerous support letters have been provided from extended family members and the applicant's pastor confirming the contributions the applicant made to his mother's care and well-being.

Were the applicant removed from the United States, the applicant's U.S. citizen mother would have to care for herself and her husband while suffering from serious and life-threatening medical conditions, without the complete emotional, physical and financial support of the applicant. The AAO thus concludes that the applicant's U.S. citizen mother would suffer extreme hardship were the applicant to relocate abroad while she remains in the United States.

With respect to relocating abroad to reside with the applicant based on the denial of the applicant's waiver request, the record does not contain any information or evidence concerning potential hardship to the applicant's mother in Guyana. As such, it has not been established that the applicant's mother would experience extreme hardship if she relocated to Guyana, her native country, to reside with the applicant due to his inadmissibility.

Although the applicant has demonstrated that his U.S. citizen mother would experience extreme hardship if separated from the applicant, 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. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 his mother in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's mother will face extreme hardship if the applicant is unable to reside in the United States.[2] Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or is refused admission. There is no documentation establishing that the applicant's mother's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's mother's situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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[2] As the applicant has failed to establish extreme hardship pursuant to sections 212(i) and 212(h) of the Act, for his fraud or willful misrepresentation and for his conviction for a crime involving moral turpitude, as outlined in detail above, it is not necessary for the AAO to determine if the applicant has established exceptional and unusual hardship pursuant to section 212.7(d) of Title 8 of the Code of Federal Regulations, for having been convicted of a crime of moral turpitude of a violent or dangerous nature.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.