

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

[Redacted]

H2

FILE:

[Redacted]

Office: COLUMBUS, OH

Date:

AUG 18 2010

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. section 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 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 \$585. 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.

[Redacted]

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of [REDACTED]. He was found to be inadmissible to the United States pursuant to 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 Crimes Involving Moral Turpitude (CIMT). The applicant is the spouse of a U.S. citizen and the father of three U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to remain in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 26, 2007.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was in error and that the record establishes the applicant's qualifying relatives will experience extreme hardship if the applicant is excluded from the United States.

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

(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, that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

(1) (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 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

The record indicates that the applicant was convicted of Conspiracy to Commit Copyright Infringement, 18 U.S.C. § 371, Copyright Infringement, 18 U.S.C. § 506, and Trafficking in Counterfeit labels, 18 U.S.C. § 2318(a) and (c)(3), on July 25, 1996, in the United States District Court for the Eastern District of Pennsylvania. Any crime involving fraud is a CIMT. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966). An examination of the statute reveals that fraud is an element of copyright infringement, 18 U.S.C. § 506, and trafficking in counterfeit labels, 18 U.S.C. § 2318(a). Any crime that involves intent to defraud is also a CIMT.

Squires v. I.N.S., 689 F.2d 1276, 1278 n. 3 (6th Cir. 1982). As such, the applicant's convictions for Copyright Infringement, Trafficking in Counterfeit Labels, and Conspiracy to Commit Copyright Infringement constitute CIMTs, and he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this finding.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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 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, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and three children are the qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (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 exist 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 that will be taken 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 of Immigration Appeals (BIA) 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*, the BIA 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 BIA 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 BIA 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).¹

However, though hardships may not be extreme when considered abstractly or individually, the BIA 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*

¹ Counsel asserts that the Field Office Director used outdated case law in her decision, specifically *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984) and *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968). However, the precedent decisions cited by counsel are not outdated, as they have not been overturned in whole or in part by subsequent legal decisions. They continue to offer valuable insight into the meaning of extreme hardship and the Field Office Director’s reliance on these decisions in her discussion of extreme hardship was, therefore, appropriate.

and [REDACTED] 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).

Family separation, for instance, 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 nature of family 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) ([REDACTED] 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 [REDACTED] reflects the norm that spouses reside with one another and 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 family relationship involved, the hardship resulting from family separation is determined 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. 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 record contains documents filed in relation to previous proceedings, including the petitioner's Form I-130 and the applicant's removal proceedings. With regard to the Form I-601, the record includes, but is not limited to, a brief from counsel; the applicant's Jordanian passport, which he used to enter the United States in 1988; statements from the applicant's spouse; a copy of the applicant's marriage license; copies of birth certificates for the applicant's children; copies of telephone and Dish Network bills; a copy of the applicant's spouse's naturalization certificate; copies of lease agreements; and court records pertaining to the applicant's convictions.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

To establish that relocation would result in extreme hardship for the applicant's family, counsel asserts that the applicant's spouse fears returning to the Israeli-occupied West Bank due to the constant strife, violence, economic and social conditions there, and that because of these conditions it would be impossible to care for or provide for her family and would result in extreme hardship for them. Counsel also asserts that the applicant has diabetes, that he would be unable to receive medical care if he relocated to the West Bank and that his potential death would result in extreme hardship for his spouse and children. Counsel further states that the applicant's children are U.S. citizens, have lived their entire lives in the United States and are unfamiliar with the culture of Palestine or Kuwait. The applicant, however, is a citizen of Jordan and must establish that his qualifying relatives would experience extreme hardship in Jordan. The record fails to demonstrate why the applicant and his family would reside in the West Bank or Kuwait upon relocation rather than in Jordan. As counsel has not addressed the impacts of relocating to Jordan on the applicant's family, his assertions are not relevant to this proceeding.

The record contains a statement from the applicant's spouse in which she asserts that she would be unable to relocate to Kuwait with the applicant because she is of Palestinian heritage, and because she is a woman and women have limited rights in Kuwait. However, as just noted, the applicant, although born in Kuwait, is a citizen of Jordan and must establish hardship to his spouse in that country. As such, the applicant's spouse's assertions regarding the hardship she would face in Kuwait also lack relevance in this matter. Accordingly, the applicant has failed to establish that his spouse or children would experience extreme hardship if they were to relocate with him to Jordan.

The record also fails to establish that the applicant's spouse and/or children would experience extreme hardship if the applicant were to be excluded and they remained in the United States. The applicant's spouse asserts that it would be unthinkable for her to live without the applicant as she would not be able to support their family financially or emotionally. She states that the applicant is the sole financial support for their family, and that she is unemployed and has no marketable skills for employment. The record includes several of the applicant's bills and lease agreements for two of the applicant's prior residences. However, this limited financial documentation does not establish the applicant's family's financial obligations. The record also indicates that the applicant's spouse has not been employed since immigrating to the United States but there is no evidence that demonstrates she would be unable to obtain employment in the applicant's absence. Further, the record shows that the applicant's spouse's parents live in the same city as their daughter and no evidence has been provided to establish that they would be unable or unwilling to assist her and their grandchildren in the applicant's absence. Moreover, the applicant has submitted no documentary evidence, e.g., country conditions materials on the economy and employment in Jordan, to establish that he would not be able to obtain employment and financially assist his family from outside the United States. Without evidence to corroborate her assertions, the AAO cannot make a determination that the applicant's spouse or her children would experience extreme hardship if the applicant is excluded and they remain in the United States.

As the applicant has failed to establish extreme hardship to his spouse and/or children, he is ineligible for a waiver under section 212(h) 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) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.