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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**



#2



DATE: **DEC 22 2011** Office: BALTIMORE, MD

FILE: 

IN RE: Applicant: 

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 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,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom 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 committed a crime involving moral turpitude. The applicant's spouse and child are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district 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. *Decision of the District Director*, dated January 25, 2008.

On appeal, counsel asserts that the district director's decision is erroneous and an abuse of discretion. *Form I-290B*, received February 22, 2008.

The record includes, but is not limited to, the applicant's statement, the applicant's spouse's statement, a psychological evaluation, financial records, letters of support and a medical letter for the applicant's son. The entire record was reviewed and considered in arriving at a decision on the appeal.<sup>1</sup>

The record reflects that the applicant was convicted on April 29, 2004 of conspiracy to defraud and was sentenced to 30 months imprisonment by the Crown Court at Southwark. Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that "Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct." 341 U.S. 223, 232 (1951). As such, the AAO finds that the applicant committed a crime involving moral turpitude and the applicant is inadmissible under section

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<sup>1</sup> Counsel requested additional time to submit a brief and/or additional evidence to the AAO on the Form I-290B and in an April 17, 2008 letter. The AAO did not receive a brief and/or additional evidence and the AAO then requested this from counsel on August 4, 2011. In response, a letter from the [REDACTED] was submitted in which he states that he is representing the applicant and will submit a brief and additional evidence by September 9, 2011. On September 12, 2011, the AAO received a Form G-28, Notice of Appearance as Attorney or Representative, signed by the applicant and [REDACTED] as well as a request for an additional 17 days in which to file a brief. On September 29, 2011 this office received another request for additional time in which to file a brief. In the request, counsel explained that he was attempting to obtain a current medical evaluation of the applicant's son. Counsel stated that the applicant's son had an appointment for a consultation on November 23, 2011. However, no additional brief or evidence has been submitted to the AAO. The regulations do not allow an applicant an open-ended or indefinite period in which to supplement an appeal once it has been filed. Therefore, the AAO considers the record to be complete and will render a decision on the record as currently constituted.

212(a)(2)(A)(i)(I) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on appeal.

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

(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:

(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 child are the only qualifying relatives 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-Morales*, 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.

Prior counsel stated that the applicant's spouse does not have family or friends in the United Kingdom; she has no knowledge or expectation of employment possibilities there; she has satisfying employment which provides good health insurance and other important benefits; her and the applicant's son was diagnosed with having a neurological condition resulting in partial paralysis of his right leg; their child will require complex tests and the attention of a medical specialist for the foreseeable future; and he will likely need physical therapy. *Brief in Support of Form I-601*, dated

October 9, 2007. The record reflects that the applicant's child was diagnosed with partial paralysis of the right leg; the specific nature is to be determined by testing and consultations; his treatment includes physical therapy and botox injections; and the prognosis is unclear at this time. *Medical Letter*, dated October 2, 2007

The applicant's spouse states that she truly enjoys her job with a cable company where she helps customers resolve their account problems; she is comfortable with the direction of her career; her employer provides good medical insurance; she does not know anything about living in the United Kingdom; she does not know anyone there or what kind of employment she would be able to find; these unknown things would cause her a great deal of uncertainty and anxiety, and she does not function well under such conditions; and the thought of uprooting and moving to a different country is causing her to have difficulty sleeping. *Applicant's Spouse's Statement*, dated September 14, 2007.

The record does not include supporting documentary evidence that the applicant and/or his spouse would have difficulty finding employment in the United Kingdom or that they would experience financial hardship in the United Kingdom. The record is not clear as to the prognosis of the applicant's child's medical problem or of any treatment he is receiving in the United States. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record does not include any other claims or documentary evidence of hardship. The record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that a qualifying relative would experience extreme hardship upon residing in the United Kingdom.

Prior counsel stated that the applicant's spouse has gotten her life together after several periods of depression; she loves the applicant and they have a newborn child together; she depends on the applicant for emotional support and to help raise their child; their child needs to have the applicant present in order to achieve proper development; the applicant will not be able to participate in his child's treatment plan for his neurological condition; and the entire burden of dealing with their child's treatment will fall upon the applicant's spouse. *Brief in Support of Form I-601*.

The applicant's spouse states that her first marriage failed in 2002 and she went through a period of depression. *Applicant's Spouse's Statement*. The applicant was evaluated by a psychologist who states that the applicant's spouse became depressed, cried frequently, had difficulty sleeping, and lost 40 pounds during her first marriage; she was depressed briefly after separating from her first spouse; she was depressed and had difficult functioning when her current spouse was incarcerated in England; she has a tendency to present herself in a favorable light and minimized her symptoms during the evaluation; the tests performed reflect an absence of symptoms of depression and anxiety; her tests are consistent with understating symptoms; her test scores are uncommon even in nonclinical populations; the likelihood of depression is high if the applicant is removed as her prior periods of depression were related to relationship losses; single mothers have a higher incidence of depression; and children of single mothers are less likely to receive adequate health care, and are at higher risk of having social problems, early sexual activity, delinquency and substance abuse. *Psychological Evaluation*, dated August 23, 2007.

Counsel states that the applicant's spouse's income of approximately \$1,690 per month is sufficient to cover less than half of the family's monthly expenses of approximately \$3,675; the applicant earns approximately \$2,200 per month; and the cost of child care and other expenses of raising a young child will make it impossible for the applicant's spouse and child to survive financially. *Brief in Support of Form I-601*. The applicant's spouse states that the applicant works at a bank and his net pay is \$1,650 per month. *Applicant's Spouse's Statement*.

The applicant's spouse's paystubs from 2007 reflect a net biweekly pay of \$938 and the applicant's paystubs reflects a net biweekly pay of \$826 to \$855. The record includes a financial statement for the applicant's spouse and copies of bank statements, phone bills and tax documents.

The record reflects that the applicant's spouse and child may experience some emotional and financial hardship without the applicant. However, the record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of 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 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.