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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**



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DATE: Office: CHICAGO, IL FILE:

SEP 02 2011

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 Field Office Director, Chicago, Illinois. 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 Poland 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 is a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

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. *Decision of the Field Office Director*, dated February 13, 2009.

On appeal, counsel asserts that the applicant was not convicted of a crime involving moral turpitude and that she and her spouse would experience extreme hardship if she is denied admission to the United States. *Form I-290B*, received March 16, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's statement, country conditions, financial documents and the applicant's criminal record. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted on June 19, 2006 of scheme to defraud under Florida Statutes § 817.034(4)(a)(3), a felony of the third degree. A felony of the third degree is punishable by a term of imprisonment not exceeding five years under Florida Statutes § 775.082. The applicant was required to pay restitution and various costs along with the other requirements in her June 14, 2006 agreement as part of the pre-trial intervention program.

Counsel states that the applicant signed a plea of not guilty document; she admitted her guilt as part of a pre-trial intervention program; she completed the program; the charges were dismissed pursuant to the program; the applicant believed that she would not have a "conviction" due to completing the program; she was not advised of the immigration consequences of her criminal matter; the dismissal resulted in there not being a conviction; and if there is a conviction, the petty offense exception applies. *Brief in Support of Appeal*, undated.

The applicant's June 14, 2006 agreement as part of the pre-trial intervention program reflects that she admitted her guilt for the crime she was charged with.

Section 101(a)(48) of the Act states:

(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the Judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The AAO finds that the applicant's admission of guilt in her pretrial intervention agreement satisfies the requirement in section 101(a)(48)(A)(i) of the Act that she has "admitted sufficient facts to warrant a finding of guilt." See *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). The requirement of section 101(a)(48)(A)(ii) of the Act was met as she was required to pay restitution, court costs and had restraints imposed as detailed in her pretrial intervention agreement. As such, the conviction requirements of section 101(a)(48) of the Act have been met.

Florida Statutes § 817.034(3) states, in pertinent part:

....

(d) "Scheme to defraud" means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.

Florida Statutes § 817.034(4) states, in pertinent part:

(a) Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:

....

3. If the amount of property obtained has an aggregate value of less than \$20,000, the violator is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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 212(a)(2)(A)(i)(I) of the Act. As noted above, the applicant was convicted of a felony of the third degree, which carries a penalty of imprisonment up to five years. Therefore, the petty offense exception does not apply.

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 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-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.

Counsel states that the applicant maintains no contact with her parents; her high school diploma from the United States would not be recognized and she would have to re-enter high school for two years in Poland; and she is close to her spouse’s family. *Brief in Support of Appeal*, undated. Counsel states that the applicant’s spouse does not speak Polish; he is working as a general manager at a bar and obtaining employment in Poland would be impossible; basic communication skills are required for employment dealing with the public; he has built up his career over the last 6 years; all of his family lives in the United States; and his parents and two siblings live in Michigan. *Id.* The applicant states that one hour of Polish language instruction is 90 PLN and it is a complicated language to learn; the cost of living would make the idea of having a family almost impossible; and her spouse would face depression if he left the United States. *Applicant’s Statement*, dated January 19, 2009. The record includes an employment letter for the applicant’s spouse reflecting a salary of \$60,000 per year plus bonuses. The record includes some information on the economic state in Poland. However, the record does not establish that the applicant or her spouse would be unable to secure employment in Poland and is not clear as to the degree of financial hardship that the applicant’s spouse would experience if he moved to Poland. The record does not contain any evidence, other than the applicant’s statement, regarding the degree of emotional hardship that the applicant’s spouse would experience if he moved to Poland. The record does not include any other claims or documentary evidence of hardship.

The record reflects that the applicant's spouse may experience some difficulty living in Poland. 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 residing in Poland.

Counsel states that the applicant's spouse is the sole provider for the family. *Brief in Support of Appeal*. However, the record reflects that the applicant is also employed. The applicant states that she and her spouse could not imagine life without each other and they plan to purchase a home and start a family. *Applicant's Statement*. The record includes a few bills for the applicant and her spouse. However, the record does not reflect that the applicant's spouse would be unable to meet his financial obligations in the applicant's absence. Therefore, the record is not clear as to the degree of financial hardship that the applicant's spouse would experience if he remains in the United States. The record does not contain evidence, other than the applicant's statement, regarding the degree of emotional hardship that the applicant's spouse would experience if he remains in the United States. 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 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 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 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.