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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals
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U.S. Citizenship
and Immigration
Services

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Date: **SEP 30 2011**

Office: CHICAGO

FILE: 

IN RE:

Applicant: 

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

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.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Belize who was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that he qualified for the waiver, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the director failed to properly apply the law as the evidence demonstrates that the applicant's U.S. citizen mother and stepfather, and U.S. citizen daughter would experience extreme hardship. Counsel maintains that the applicant emotionally and financially supports his daughter. Further, counsel avers that the applicant's 72-year-old stepfather has serious health problems (asthma, diabetes mellitus, hypertension, and peptic ulcers) and depends on the applicant for companionship and to help with medication. In addition, counsel contends that the applicant emotionally supports his 62-year-old mother, who has two jobs taking care of people in nursing homes. Lastly, counsel avers that the applicant provided emotional support to his family when his sister attempted suicide.

The AAO will first address the finding of inadmissibility. Section 212(a) of the Act states in pertinent part:

(2) Criminal and related grounds. —

(A) Conviction of certain crimes. —

- (i) In general. — Except as provided in clause (ii), any 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, or
 - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

....

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

The Attorney General may, in his discretion, waive the application of . . . subparagraph (A)(i)(II) . . . insofar as it relates to a single offense of simple

possession of 30 grams or less of marijuana if . . . in the case of an immigrant who is 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 permanent resident spouse, parent, son, or daughter of such alien.

The record reflects that in 1998 the applicant was convicted of violation of 720 ILCS 550/4(a), which states:

Sec. 4. It is unlawful for any person knowingly to possess cannabis. Any person who violates this section with respect to:

a) not more than 2.5 grams of any substance containing cannabis is guilty of a Class C misdemeanor . . .

This conviction renders the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act, U.S.C. § 1182(a)(2)(A)(i)(II).

A section 212(h) waiver applies to controlled substance cases that relate to a single offense of possession of 30 grams or less of marijuana. The applicant's crime meets the requirement of being a single offense of simple possession of 30 grams or less of marijuana; consequently, the applicant is eligible to apply for a section 212(h) waiver.

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in this case are the applicant's U.S. citizen mother and daughter and his lawful permanent resident stepfather. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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.

In rendering this decision, the AAO will consider all of the evidence in the record such as birth certificates, statements, photographs, information about Belize, criminal records, financial records, employment letters relating to the applicant's mother, and other documentation.

The record reflects that the applicant has a close relationship with his mother, stepfather, sister, and daughter. The applicant's mother averred in the affidavit dated June 2009 that it will be extremely hard on her if the applicant cannot stay in the United States. She stated that she has two physically and emotionally demanding jobs working as a certified nursing assistant, and that for at least two or three days of every week she works 16-hour days. The applicant's mother maintained that she depends on the applicant to help take care of her husband as he has health problems. Further, the

applicant's mother conveyed that her daughter was molested when she was 11 years old and that her daughter's suffering has not ended. The applicant's mother stated that her daughter recently attempted suicide, and that it was the applicant who was able to console her daughter and that both she and her daughter would be devastated without him. Finally, the applicant's mother averred that she has a driving phobia and is helped by the applicant who drives her on the freeway and at night.

The record contains an undated letter by the applicant's sister in which she stated that if not for her brother she would no longer be alive. The applicant's sister averred that while she was in the hospital after trying to kill herself her brother was present and has never left her, helping her emotionally, giving her the will to live, and being a brother and father, a mentor and friend.

The record contains criminal records reflecting that in February 2001, a plea of guilty was entered by [REDACTED] for aggravated criminal sexual abuse (victim between the ages of 13-16). In addition, the record contains [REDACTED] letter dated April 22, 2009 in which he stated that the applicant's stepfather has type 2 diabetes mellitus for which he takes oral medication and insulin, and that his diabetes is not well controlled. [REDACTED] also stated that the applicant's stepfather has hypertension, peptic ulcer disease, and asthma. The applicant's stepfather indicated in an undated letter that the applicant has a close bond with his stepfather. In addition, [REDACTED] declared in the letter dated April 28, 2009 that the applicant's mother depends on the applicant for moral and emotional strength and for driving her on the highway and elsewhere. Lastly, the record contains employment letters reflecting that the applicant's mother has two full-time jobs for which she earns \$9.60 and \$10.75 per hour as a certified nurse aide.

The stated hardship to the applicant's mother is emotional in nature. The evidence in the record of the childhood trauma of the applicant's sister, the health problems of the applicant's stepfather, and the emotional support that the applicant's family members receive from him is in accord with the assertions made by the applicant's family members. Thus, when the hardship factors are considered together, we find they demonstrate extreme emotional hardship to the applicant's mother if she remains in the United States without her son.

With regard to the hardships of living in Belize, former counsel averred in the letter dated May 23, 2008 that the applicant's mother could not return to Belize due to her anxiety about her husband's health problems and the high rate of unemployment in Belize. Furthermore, the applicant's mother asserted in an undated letter that Belize's high cost of living makes it very hard to survive. The U.S. Department of State Country Reports on Human Rights Practices – 2009 for Belize, stated that for manual and domestic workers the minimum wage was \$3.00 BLZ (\$1.50), which did not provide a decent standard of living for a worker and family. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2008: Belize*, 5 (February 25, 2009). In addition, the International Women's Rights Action Watch averred in the submitted country report on Belize that the government provides free universal health care to Belizeans; however, the state-run system provides only primary and very basic care. The U.S. Department of State Country Specific Information – 2010 for Belize is consistent with this as it stated that medical care for minor ailments is available in urban areas, but trauma care or advanced medical treatment is limited, even in Belize City. U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information – 2010: Belize*, 7-8 (July 13, 2010).

The stated hardships to the applicant's mother if she joined her son to live in Belize are financial and emotional in nature. That she will endure such hardships is consistent with the record as it reflects that both the applicant and his mother have been employed in low-paying jobs in the United States, and that they will most likely be engaged in such a manner in Belize. Consequently, in view of all of the aforementioned evidence, we believe that the applicant and his mother will not be able to obtain employment in Belize for which they are qualified and which will provide medical insurance, particularly for the applicant's stepfather, and an income that will ensure a decent standard of living. When these hardship factors are considered collectively, we find that they demonstrate that the applicant's mother will experience extreme emotional and financial hardship if she joined her son to live in Belize.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301.

The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

We find that the adverse factors in the instant case are the applicant's criminal conviction for not more than 2.5 grams of cannabis, and his unlawful presence and any unauthorized employment in the United States.

The applicant's favorable factors are the extreme hardship to his mother and the hardship to his stepfather, sister, and daughter if the waiver is denied, and the passage of 13 years since his criminal conviction. Moreover, weight is given to the letters in the record attesting to the good character of the applicant. The applicant's former spouse averred in the statement dated June 15, 2009 that he is a good father to their daughter and helps her financially. [REDACTED] stated in the undated

letter that she has known the applicant for ten years and that he has helped her take care of her mother, who has dementia, and has been entrusted in maintaining her real estate and collecting and depositing rents. ██████████ stated in the letter dated April 28, 2009 that the applicant is a source of strength and support for his family members. We also give favorable weight to the fact that the applicant has expressed remorse for his actions in the affidavit dated June 8, 2009.

Thus, when we consider and balance the favorable factors against the adverse factors, we find that the adverse factors are outweighed by the favorable factors.

In proceedings for application for waiver of grounds of inadmissibility under section and 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. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.