



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]
DATE: DEC 28 2012

Office: MIAMI, FL

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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:

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Miami, Florida. 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 Colombia who was found to be inadmissible under 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 been convicted of crimes involving moral turpitude. The applicant does not contest the finding of inadmissibility. The applicant's spouse is a lawful permanent resident and his child is a U.S. citizen. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The field office director determined that the applicant 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 July 16, 2010.

On appeal, counsel asserts that the field office director failed to consider all of the hardship factors in the applicant's case. *Form I-290B*, received August 16, 2010.

The record includes, but is not limited to, counsel's brief, financial records, medical records, statements from the applicant and his spouse, letters of support, a psychological evaluation and country conditions information on Colombia. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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.

The record reflects that on July 7, 2001 the applicant was convicted of larceny and breaking and entering (with the purpose of stealing money and goods) in Tokyo, Japan and he was sentenced to imprisonment for two years and six months. As the applicant has not contested his inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

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 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.

Counsel states that the applicant’s spouse will lose her permanent residence if she lives in Colombia; she suffer from Major Depressive Disorder and her psychological condition will deteriorate if she is unable to live with her parents, who have always lived with her and who she cares for; the applicant’s spouse and child could be the kidnapping targets of criminal organizations; Colombia has been affected politically and economically and it would be difficult, if not impossible, for the applicant to find employment after living in the United States for several years; and minimum wage in Colombia is \$250 per month.

The applicant’s spouse makes similar claims as counsel and also states that she has never been to Colombia; she does not have family in Colombia; she will not be able to obtain employment in Colombia due to lack of business contacts and the high unemployment rate; and she will suffer extreme hardship due to the high level of crime.

The psychologist who evaluated the applicant’s spouse states that she received psychiatric treatment at the age of 13; she chronically suffers from periods of depression and anxiety; she has not sought treatment due to financial difficulty; she was diagnosed with Major Depressive Disorder, Recurrent, Moderate, Panic Disorder Without Agoraphobia, Sleep Disorder, Insomnia Type, and Dependent and Histrionic personality features; she is unable to sleep; she has a marked impairment in her daily energy levels; she would not want her son to lose educational opportunities in the United States; and medical services would not be readily available to her child.

The applicant’s mother-in-law’s medical records reflect that she has been assessed with fatigue, palpitations, mitral valve disorders, malignant hypertension, bronchitis, low back pain, nontoxic

multinodular goiter, and venous insufficiency. His father-in-law's medical records reflect that he has been assessed with acute pancreatitis, malignant hypertension, hypertension heart failure with heart failure, hyperglyceridemia and Abn PSA.

The record includes country conditions information detailing human rights issues, violence and the minimum wage in Colombia. The record reflects that the applicant and his spouse have a three year old child.

The record reflects that the applicant's spouse is originally from Cuba. She does not have any ties to Colombia. In addition, her claim that she would lose her lawful permanent residence is plausible. She would be raising her three year old child there and he would lose educational opportunities in the United States. She would also be separated from her parents, who she cares for and who have documented medical issues. The record reflects that she would experience psychological issues upon relocation. The AAO notes the general country conditions in Colombia. Considering the hardship factors mentioned, and the normal results of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship if she resided in Colombia.

Counsel states that the applicant is supporting his spouse, child and spouse's parents; his spouse has not worked since the birth of their child; his spouse's parents live with them and they have medical problems; her psychological condition will deteriorate without the applicant's support; and she will not be able to work and care for her parents.

The applicant's spouse makes similar claims as counsel and also states that her mother does not work due to her age and medical condition; her father works part-time; many people have lost their jobs in her father's company; and her monthly expenses are \$3413.

The AAO again notes the findings of the psychologist who evaluated the applicant's spouse, and the impact on her health due to separation.

The record includes evidence that the applicant distributes Snyder's products in a specific geographical area. The record includes evidence of various bills and the applicant's paychecks.

The record reflects that the applicant's spouse is experiencing psychological issues. She would be raising her child without the applicant and the record reflects that he is the source of financial support. In addition, she is living with and caring for her parents with documented medical issues. Considering the hardship factors mentioned, and the normal results of separation, the AAO finds that the applicant's spouse would suffer extreme hardship if she remained in the United States.

However, the AAO does not find that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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).

The favorable factors include the presence of the applicant's lawful permanent resident spouse and U.S. citizen child, and extreme hardship to his spouse.

The adverse factors in the present case are the applicant's crimes and unauthorized period of stay. The AAO notes that the applicant's judgment record reflects that he stole several items from a clock shop; he entered another person's residence with the purpose of stealing money and goods; he unlocked and entered another person's residence and stole money and rings; he unlocked and entered another person's residence and stole 13 items; and he stole 912 precious items from a jewelry store under the supervision of a company director. The AAO notes that the value of the stolen items was significant, with the value of the 912 precious items being approximately \$142,000.

The record also includes documentation reflecting that the applicant was found with \$20,000 onboard the M/V Topaz 1 in Japan on or around October 6, 2000, and cocaine smuggling was alleged. The AAO notes that the applicant's two brothers were arrested in August 2001 in Japan for violation of the Customs Law and the Narcotics Control Law; his brothers were involved in the attempted smuggling of 10 kilos of cocaine into Japan; and one of his brothers was sentenced to an eight year imprisonment and a 1.5 million yen fine. The AAO notes that the applicant is possibly inadmissible under section 212(a)(2)(C) of the Act for reason to believe that he was a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking of a controlled substance or listed chemical.

Regardless, the record suggests involvement in organized criminal activity on a substantial scale, and the applicant has not addressed his criminal past sufficiently to establish rehabilitation and to

allow the AAO to assess the appropriate weight we should give to the negative discretionary factors. We cannot determine that the positive factors outweigh the negative factors in this case. Rather, given the foregoing, we determine that a grant of relief in the exercise of discretion appears not to be “in the best interests of the country.” Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.