

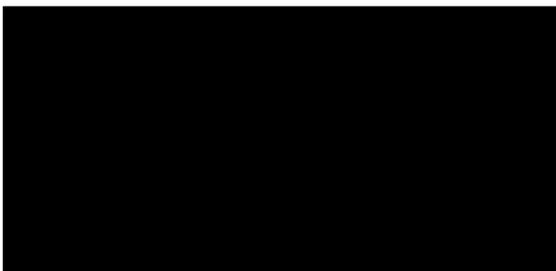
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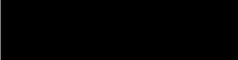
**U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
U.S. Citizenship  
and Immigration  
Services**

*tlz*



Date: **JAN 30 2012**

Office: PHILADELPHIA

FILE: 

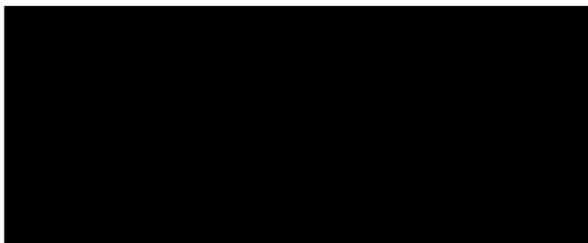
IN RE:

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)

 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,

*Michael Shumway*

*for* Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Serbia who was found to be inadmissible to the United States pursuant to 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. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and children.

The field office director denied the Form I-601 application for a waiver, finding that the applicant failed to show that she is statutorily eligible for a waiver under section 212(h). *Decision of the Field Office Director*, dated May 7, 2009.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient documentation to show that her conviction for possession of marijuana involved an amount less than 30 grams, so she is eligible for consideration for a waiver under section 212(h) of the Act. *Statement from Counsel on Form I-290B*, dated June 3, 2009. Counsel further asserts that the applicant's husband will suffer extreme hardship should the present waiver application be denied.

The record contains, but is not limited to: statements from counsel, the applicant, the applicant's husband, the applicant's mother, and other individuals; documentation in connection with the applicant's criminal conviction, including a certificate of analysis addressing the amount of marijuana that was in her possession; medical records for the applicant, the applicant's husband, and the applicant's children; copies of birth records for the applicant, her husband, and her children; documentation of the applicant's family's health insurance; tax and employment records for the applicant's husband; and documentation relating to conditions in Serbia. The entire record was reviewed and considered in rendering this decision.

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

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)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

The record reflects that the applicant was arrested on [REDACTED] 2003 and charged with possession of marijuana under Virginia State Code § 18.2 – 250.1. She was assessed a fee, ordered to complete an education class, and required to perform 24 hours of community service. This conviction renders the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

Prior to the present appeal, the applicant had not submitted sufficient documentation of her conviction in order to allow United States Citizenship and Immigration Services (USCIS) to determine the amount of marijuana for which she was convicted. Accordingly, the field office director found that the applicant had not established that her offense related to simple possession of 30 grams or less of marijuana, such that she would be eligible for consideration for a waiver under section 212(h) of the Act.

On appeal, the applicant submits a certificate of analysis from the Department of Criminal Justice Service, Division of Forensic Science, in Fairfax Virginia. This document reports that the applicant was in possession of “Marijuana residue.” The AAO finds this document sufficient to show that the applicant was in possession of 30 grams or less of marijuana. Accordingly, the record now shows that the applicant may be considered for a waiver under section 212(h) of the Act.

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 husband and children 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 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).

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.*

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 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).

In a joint statement dated April 1, 2009, the applicant and her husband asserted that the applicant's husband and two children will suffer extremely unusual hardship if the applicant is forced to leave the United States. However, United States Citizenship and Immigration Services (USCIS) has received information that indicates that the applicant and her husband no longer reside together as husband and wife, and that they have ended their marital relationship. This information also indicates that the applicant's husband wishes to withdraw his sponsorship for the applicant's permanent residence. This information is inconsistent with the applicant's assertions that her husband will suffer hardship should she depart the United States.

The AAO is unable to determine whether the applicant and her husband are still married, or to ascertain the current status of their relationship. Thus, the AAO is unable to conclude that the applicant's husband would suffer extreme hardship should the present waiver application be denied. The AAO is also unable to determine the current circumstances of the applicant's children, such to show the consequences they would face should the present waiver application be denied.

It is further noted that the present Form I-601 application for a waiver was filed in order to establish that the applicant is admissible to the United States for the purpose of adjusting her status to lawful permanent resident pursuant to a Form I-485 application. These applications are based on her eligibility to adjustment her status based on her marriage to a U.S. citizen and an approved Form I-130 petition for alien relative he filed on her behalf. Should they divorce, or should the applicant's husband otherwise withdraw the Form I-130 petition, there would be no basis for the present waiver application and the Form I-601 would become moot. The AAO is unable to determine whether the applicant and her husband remain married.

On November 14, 2011, the AAO issued a Notice of Intent to Dismiss the appeal to counsel and the applicant at her address of record, presenting the above deficiencies in the record and affording the applicant 30 days to respond. The AAO notified the applicant that the appeal would be dismissed for the reasons stated in the notice should she fail to respond. The notice issued to the applicant was returned as undeliverable with no forwarding address, but the notice issued to counsel apparently was received. The AAO has received no response. Accordingly, the appeal will be dismissed.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden to show that she is eligible for a waiver under section 212(h) of the Act.

**ORDER:** The appeal is dismissed.