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



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Date: **MAY 02 2012**

Office: HIALEAH, FL

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:

SELF-REPRESENTED

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,

for Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Trinidad and Tobago 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 a crime involving moral turpitude. The director stated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant states that her husband has had severe asthma since childhood and that his medical condition constitutes extreme hardship, particularly as psychological stress triggers his asthma. The applicant indicates that her husband might not be able to cope with life in Trinidad as it has poor health care and because he would separate from his mother and sister in the United States. The applicant submitted medical records and letters on 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 April 27, 2006, the applicant was convicted of grand theft in Florida.

The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is under section 212(h) of the Act. That section provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) 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. 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.

The applicant's husband stated in the letter dated January 18, 2010 that he had asthma since childhood and is still treated for his condition. The applicant's husband stated that in Trinidad and Tobago he will not have medical care comparable with what he has in the United States. The applicant's husband asserted in the affidavit dated November 4, 2009 that he does not want to separate from his mother, father, sister and relatives and start his life over in Trinidad. The applicant's husband indicated that he and his wife will not find work in Trinidad which is comparable in salary to what they now have in the United States. The applicant's husband stated that Trinidad and Tobago have a high crime rate and are not places to raise a family. The applicant's husband conveyed that he lived in the United States since he was young and his life and dreams are here, and he and his wife hope to start a family here.

In regard to joining the applicant, the asserted hardships to the applicant's husband in the instant case are concern about healthcare in Trinidad and Tobago, not finding a job which will provide an adequate income, violent crime, and separation from family members and his life in the United States. The applicant submitted information from the U.S. Department of State stating that medical care in Trinidad and Tobago is below United States standards for treatment of serious injuries and illness, and that the county's incidents of violent crime has risen. U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information – 2009: Trinidad and Tobago*, 2-3 (September 25, 2009). However, the applicant has not demonstrated that her husband's asthma is a serious health condition and that the medical care for asthma in Trinidad and Tobago will not be comparable to what he receives in the United States. The applicant also submitted information about crime in Trinidad and Tobago, such as the article about kidnappings which stated that Trinidad's population was 1.2 million and 150 kidnappings occurred in the last couple of years. We note that in an undated letter the applicant expressed that she "missed home and had all intentions of returning," which suggests that the applicant's life in Trinidad was not one of extreme hardship, and the record reflects that the applicant was employed in Trinidad in March 2006. The applicant has not submitted documentation showing that they will not be able to find jobs in Trinidad and Tobago for which they are qualified and which will pay a wage that will ensure they have a decent standard of living. Thus, when the emotional and financial hardships are considered collectively, they do not establish that the hardship that the applicant's husband will experience in Trinidad and Tobago are more than the common result of inadmissibility or removal.

The asserted hardships of remaining in the United States without the applicant are emotional in nature. The record reflects that the applicant and her husband married on December 29, 2008. The claim that the applicant and her husband have a close relationship is in accord with the letters by the applicant's brother and sister-in-law. However, there is not additional evidence to demonstrate how the emotional hardship in this case goes beyond the normal consequences of separation from a spouse due to inadmissibility or removal. When we consider this hardship factor, we find that the hardship that the applicant's husband will experience does not rise to the level of extreme hardship.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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 rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

**ORDER:** The appeal is dismissed.