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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 10 2012**

Office: PHILADELPHIA, PA

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:



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, 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 the Ukraine 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 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, counsel contends that the applicant's daughter and grandchild will experience extreme hardship because they will require public assistance if the waiver is denied. Counsel maintains that *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), indicates that social and humane considerations must be considered in the hardship determination. Counsel asserts that *Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996), allows, but does not require, a narrow interpretation of extreme hardship. Counsel contends that the applicant's U.S. citizen daughter cannot work due to medical problems and is dependent on the applicant. Counsel states that the applicant's daughter is not married and her child's father does not provide emotional or financial support.

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 February 6, 2006 the applicant pled guilty to simple assault, theft by unlawful taking (movable property), and conspire to commit theft by unlawful taking. The judge placed the applicant on probation for three years.

The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes 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 at least as regards the theft convictions, 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 daughter stated in an undated letter that she was born in the Ukraine and that her parents divorced in 1995 when she was 14 years old. She stated that she lived with her mother in the Ukraine until her mother married and moved to the United States in 1996. The applicant's daughter indicated that she lived with her father in Canada and her grandmother in the Ukraine, and moved to Canada to be with her father in 1998, and that she is a lawful permanent resident of Canada. The applicant's daughter stated that she was diagnosed with Hodgkin's Disease in August 1999 and received chemotherapy in Canada from September 1999 until June 2000. She declared that during that period she stayed with her mother in the United States every two weeks then returned to Canada for chemotherapy. The applicant's daughter stated that she married her husband in the United States on August 21, 2002, and was granted permanent residency on July 3, 2004 based on her marriage. The applicant's daughter asserted that she attended a bachelor's nursing degree program in the United States and lived with her husband at her mother's house. The applicant's daughter indicated that after she has yearly CAT scans, blood tests every three months, and is tested by an oncologist every six months. The applicant's daughter conveyed that she has mitral valve prolapse, which is not usually serious but with her medical history there is a potential for serious complications. The applicant's daughter maintained that the Ukraine does not have the resources to provide adequate physical or mental healthcare and that her cancer might return or a secondary cancer develop without reliable testing.

██████████ conveyed in the psychological evaluation dated July 9, 2007 that the applicant's daughter attended a community college nursing program in 2002 and stopped due to concern about the applicant's immigration status. ██████████ indicated that the applicant's daughter described her life as a college student as dependent on her mother for meals and laundry, and not socializing very often with people of her own age. The applicant's daughter conveyed to ██████████ that her relationship with her mother was "central to her current life," and that "she had no other place to feel safe except with her mother and her dog." ██████████ stated that the applicant's daughter conveyed that since the diagnosis of Hodgkin's disease:

[S]he has had trouble making decisions. . . . she needs her mother's support and reassurance. It is unusual for her to initiate anything new. She finds herself uncomfortable and fearful if she has to be alone. . . . [the applicant's daughter] reported that she is apt to call her mother 10-15 times per day until she returns from work. Even if [the applicant's] daughter developed an interest in living by herself, she predicted that she would want to be very close to her mother's home.

stated that the applicant's daughter has psychological and emotional distress due to her medical condition and her mother's immigration situation. diagnosed the applicant's daughter with major depressive disorder and post-traumatic distress disorder.

In undated affidavits the applicant's daughter stated that she is a single mother with a six-month-old infant, and is unemployed and financially dependent on her mother, with whom she lives. She stated that her major hardship is Hodgkin's disease, and while the disease is in remission she must undergo testing to ensure it does not return. She declared that she is "much more susceptible for secondary cancers or other diseases and illnesses since my immune system is very weak." The applicant's daughter conveyed that since her husband left her she depends on her mother when she is too sick or fatigued to take care of her son. The applicant's daughter indicated that she completed a nursing program, but has not been able to get a job as a nurse.

Lastly, the applicant's daughter declared in the affidavit dated November 20, 2009 that she and her child are financially dependent on the applicant and need her to remain in the United States because her husband deserted her before the baby was born. She asserted that she has a medical condition that prevents her from working and is tired all the time due to her condition and treatment, and is anxious about her child's welfare if she is not able to survive. The applicant's daughter conveyed that she is often depressed and has stomach, chest and bone and joint pains and takes medication and vitamins for pain and depression. She asserted that she depends entirely on her mother for emotional, physical, and financial support on a daily basis. She contends that "my health is not getting any better with age but will get worse."

stated in the letter dated September 18, 2009 that the applicant's daughter has been under her care since November 2004, and that she has a history of Hodgkin lymphoma, and that she is at increased risk of secondary cancer as a result of her treatment, recurrence of her lymphoma, and breast cancer. Moreover, stated in the letter dated November 12, 2009 that the applicant's daughter has been her patient since 2002 and that for "the past year her overall well-being is significantly deteriorated." indicated that the applicant's daughter "needs extensive counseling, antidepressant medications to help her struggle with everyday life demands. At the present time she is unable to take care of her 5 months old child, unable to work and [is] fully depend on her mother for financial and psychological support." stated that the applicant's daughter has other medical problems: gastroenterologist for recurrent gastritis, mitral valve prolapse with symptoms of chest pain and palpitations, fibrocystic disease with symptoms of breast pain . . . upper respiratory infection with symptoms of disabled fatigue and disturbing cough." stated that the applicant's daughter needs lifelong observation after surviving Hodgkin lymphoma diagnosis and treatment. She stated that the applicant's daughter has post-traumatic stress disorder that paralyzes her with severe panic attack, which prevents her from participating in everyday life activities and in raising her son. Lastly,

conveyed that the applicant's daughter takes medication for depression and anxiety, for gastritis, for palpitations due to mitral valve prolapse, for breathing problems, and for treatment for H.pylory infection.

stated in the letter dated September 15, 2009 that the applicant's daughter was given Prozac for postpartum depression following delivery on January 5, 2009.

The asserted hardships in remaining in the United States without the applicant are emotional and financial in nature. The applicant stated in the affidavit dated November 25, 2009 that due to her daughter's medical problems, including post-surgical observation due to cancer treatment and emotional disabilities, her daughter cannot work or take care of her grandchild. The applicant's daughter states that "I am also in [a] medical situation where I cannot work." However, the applicant has not provided medical records for the specific health problem which prevents her daughter from working, particularly as indicated in May 2007 that the applicant's daughter's Hodgkin's Disease has been in complete remission since her treatment in 2000 and "has a very low probability of recurrence this far out from treatment." who seems to be a general practice doctor, asserted in the letter dated September 18, 2009 that the applicant's daughter is at increased risk for secondary cancer as a result of her treatment, recurrence of her lymphoma, and breast cancer. However, who is the applicant's daughter's oncologist, has not stated in the letter dated May 17, 2007 that the applicant's daughter is at high risk for breast cancer, secondary cancer, or recurrence of Hodgkin's Disease. Indeed, indicated that the applicant's daughter has been in complete remission and that "she has a very low probability of recurrence this far out from treatment," but he will be seeing "her and evaluating her every 6 months to rule out recurrence." The applicant's daughter has not demonstrated through her medical records that her mitral valve prolapse is a serious health condition that impedes normal functioning.

In regard to her mental health, in the psychological evaluation dated July 9, 2007, described the applicant's daughter as emotionally dependent on the applicant, not able to make decisions, uncomfortable and fearful if she has to be alone, calling "her mother 10-15 times per day" and not having and "an interest in living by herself." indicated that due to her medical condition and her mother's immigration situation the applicant's daughter had psychological and emotional distress, and diagnosed her with major depressive disorder and post-traumatic distress disorder. However, it seems that was not aware that the applicant's daughter was married at the time of the interview and, presumably, was living with her husband at her mother's house. While the applicant's daughter had postpartum depression following delivery on January 5, 2009, the record suggests that her condition was temporary. Thus, even though the applicant's daughter asserts that she has an emotional, physical, and financial dependence on her mother, the evidence in the record reflects that the applicant's 31-year-old daughter is emotionally mature and sufficiently independent, as manifested by the fact that she has married, completed a bachelor's degree in nursing, and has a child. Accordingly, when the hardship factors are considered collectively, they do not establish that the applicant's daughter will experience extreme emotional, physical, and financial hardship if separated from her mother.

The asserted hardships in relocating to Ukraine are not having healthcare comparable to what the applicant's daughter receives in the United States and Canada. The applicant's daughter's cancer has been in remission since 2000, and the record does not convey there is a high risk of secondary

cancer, breast cancer, or recurrence of Hodgkin's Disease. The applicant's daughter indicated that she receives a yearly CAT scan, has blood tests every three months, and is tested by an oncologist every six months. The applicant has not provided independent documentation about the standard of and access to health care in the Ukraine. The submitted information from the Central Intelligence Agency does not discuss healthcare in the Ukraine. Nothing in the record suggests that the applicant's daughter will not be able to have CAT scan and oncology examinations in the United States or Canada. The Form G-325 suggests that the applicant would have employment opportunities in the Ukraine, where she was educated as engineer and worked as such from 1982 until 1996. Also, the psychological evaluation indicates that the applicant has siblings in the Ukraine. Thus, we find that it is likely that the applicant will be able to obtain a job for which she is qualified in the Ukraine which will provide health benefits and pay a wage to ensure a decent living for her daughter and grandchild. When the hardship factors are considered collectively, they fail to show that the applicant's daughter will experience extreme hardship in joining her mother to live in the Ukraine.

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.