



U.S. Citizenship
and Immigration
Services

[REDACTED]

H2

Date: NOV 28 2012 Office: CINCINNATI

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 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 with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Jordan who was found to be inadmissible to the United States pursuant to 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. On December 27, 2004, the applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility. On September 29, 2005, the Cincinnati district director denied the waiver application, finding that the evidence did not establish that the applicant's bar to admission would impose extreme hardship upon his U.S. citizen wife. The applicant timely appealed the decision of the district director to the AAO and, on April 10, 2008, the AAO dismissed the appeal after finding that the applicant did not demonstrate that denial of his admission would result in extreme hardship to his qualifying relative.

On June 17, 2008, the applicant filed an adjustment of status application (Form I-485) seeking to have his status adjusted to that of a lawful permanent resident based upon an approved alien relative petition filed by his U.S. citizen wife. On September 28, 2009, the applicant filed a second Form I-601, seeking a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen wife. In a decision dated November 18, 2009, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that his U.S. citizen wife would experience extreme hardship as a consequence of his inadmissibility.

On appeal, counsel for the applicant asserts that the field office director erred by not considering all submitted evidence of hardship to the applicant's U.S. citizen wife. Counsel contends that the evidence outlining financial, emotional, psychological, and significant health difficulties demonstrates extreme hardship to the applicant's U.S. citizen wife. Counsel submitted additional evidence on appeal to support this assertion, including an affidavit from the applicant's wife and the complete medical record relating to her medical conditions.

The record contains, but is not limited to: counsel's brief; statements from some of the applicant's family members and friends, including his U.S. citizen wife; medical reports; a psychological evaluation of the applicant's U.S. citizen wife; copies of pay stubs and employer letters; documentation regarding the criminal history of the applicant's wife; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

- (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 Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record shows that on December 27, 2004, the applicant was convicted in the United States District Court, Southern District of Ohio at Dayton, of “conspiracy to commit interstate transportation of stolen property and receipt and possession of stolen property” in violation of 18 U.S.C. § 371. The applicant was placed on probation for two years, was ordered to pay \$708.89 in restitution, and was fined \$500.00 and assessed an additional \$100.00. The field office director found the applicant 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 from this conviction on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the field office director.

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

The AAO begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). In this case, the

applicant asserts that denial of his admission will impose extreme hardship upon his U.S. citizen wife.

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 the 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 is 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.

The asserted hardship factors in this case are the medical, emotional, and financial impact to the applicant's wife if she remains in the United States without him. On appeal, counsel for the applicant asserts that the applicant's wife is experiencing serious medical and psychological conditions, that she is totally dependent on the applicant for financial support, and that she will experience extreme hardship due to the applicant's inadmissibility. The applicant's wife states that she has been diagnosed with herniated discs in her back and other joint ailments. The record contains various medical evaluations of the applicant's wife indicating that she underwent treatment for discogenic back pain and a lumbosacral sprain from 2001 to 2004. The medical reports indicate that the applicant's wife complained of pain in her lower back and that she was prescribed medication to alleviate the pain. The most recent medical report, dated November 23, 2004, states that the applicant's wife mentioned to her treating physician that the medications and treatment have helped improve her quality of life and have also helped her psychosocial functioning.

The AAO notes that the medical documentation submitted as evidence of her medical condition dates from April 2001 to November 2004, when the applicant's wife was incarcerated for one year after being convicted of cocaine trafficking. The applicant's appeal was filed in December 2009, but no medical evaluations relating to the herniated discs diagnosis were included in the record beyond 2004. That is, there is no specific documentary evidence on the record to support the claim that the applicant's wife still requires treatment for herniated discs and other joint ailments. The medical reports do not provide enough detail about the recurrence of her condition for the AAO to make a determination as to whether the condition has worsened or whether she would now experience extreme hardship. Though the AAO acknowledges that the applicant submitted a letter prepared by [REDACTED], indicating that the applicant has been diagnosed with several medical conditions, the letter, dated September 24, 2009, does not specifically indicate that the applicant still undergoes treatment or that she is currently being prescribed medication for her condition. The AAO recognizes that the applicant's wife will experience some hardship associated with her medical conditions if she remains in the United States without the applicant, as there is some evidence in the record indicating that she has been diagnosed in the past with dyslipidemia, fibromyalgia, and insomnia. However, the applicant has failed to demonstrate that the difficulties arising from these conditions, when combined with other hardship factors, will be extreme or that they will be heightened by his absence.

Additionally, the applicant's wife avers that she has been diagnosed with major depressive disorder. In a medical report dated August 31, 2009, [REDACTED] indicates that he diagnosed the applicant's wife with a major depressive disorder "as a direct result of her fear that she will become separated from her husband." He also states that in the event that the applicant's wife were to be separated from her husband, her condition will worsen and she may develop suicidal ideation. While the AAO acknowledges [REDACTED] diagnosis, the record shows that it was based

on one interview of the applicant's wife; there is no evidence suggesting that he treats her on a regular basis or indicating extensive testing or observation. Additionally, there is no evidence in the record indicating that the applicant's wife has ever had any mental health problems in the past, has any tendencies toward depression or other mental health disorders, or receives treatment or takes medication for her alleged depressive disorder. There are no details indicating how long she has had depression or her medical history with [REDACTED]. Moreover, the AAO notes that the original Form I-601 waiver application does not mention this condition, and it was included in the record only after the field office director issued a notice of intent to deny the waiver application. Consequently, we do not find that the [REDACTED] report indicates emotional hardship beyond the common results of removal or inadmissibility.

With regard to the financial hardship experienced upon separation, both the applicant and his wife assert that she depends on the applicant's financial support in order to meet their household needs. The applicant's wife indicates that she lost her employment after she was convicted of cocaine trafficking and she "rel[ies] on her husband even more than ever before." However, there is insufficient evidence in the record to substantiate this claim, or to show that without this financial support, the applicant's wife would experience extreme hardship. No evidence detailing expenses related to the household or to the care of the applicant's wife were submitted with the appeal. Also, the Form G-325A, dated June 10, 2008, shows that the applicant's wife was receiving disability benefits in 2008. Additionally, the 2007 income tax returns indicate that both the applicant and his wife were employed and contributed to the household. Though the applicant and his wife have asserted that the applicant's wife now depends on him for financial support, there is no evidence in the record demonstrating how his earnings meet the family's financial needs through his employment. Moreover, no corroborating evidence of her pay or disability benefits has been submitted to demonstrate the inadequacy of her earnings in providing for her household. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The current documentation submitted as part of the record is thus not sufficient to support the applicant's wife claim that her financial difficulties would cause her extreme hardship in having to provide for her household by herself.

In letters and statements from the applicant's wife, she asserts that she has a good, stable relationship with the applicant and that she depends upon him for financial and emotional support. The applicant's wife states that the applicant "takes care of [her] and [she] would be lost without him." The AAO acknowledges that the applicant's wife will experience emotional hardship if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant and his wife, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

With regards to joining the applicant to live in Jordan, the asserted hardship factors to the applicant's wife are the medical and the risks in personal safety she would experience if she relocates to Jordan. Here, the record lacks adequate documentation to support these claims. There is no evidence in the record demonstrating that she could not obtain treatment for her medical conditions in Jordan, or that the availability of healthcare in the area where they would relocate is lacking.

Additionally, the applicant's wife has stated her concern over the prospect of relocating to Jordan. Counsel for the applicant also asserts that her life would be in danger if she relocated to Jordan because she is a U.S. citizen. In support of this claim, the applicant submitted a U.S. State Department Country Specific Information Sheet for Jordan. The report, dated May 6, 2009, reflects that there is anti-American and anti-Western sentiment in Jordan, particularly because of important events in the region relating to Israeli/Palestinian issues. The report further indicates that "travelers are advised to avoid any demonstrations or large gatherings of people." Though the applicant has produced some evidence corroborating her fear for her safety if she relocates to Jordan, the record does not include specific evidence demonstrating that U.S. citizens have been subjected to violence or other harm due to mere presence in the country. Rather, the U.S. State Department report contains general information about some of the risks of traveling to Jordan. As such, the record does not reflect that the applicant's wife would suffer harm or fear of harm amounting to extreme hardship were she to relocate to Jordan.

The applicant also asserts that his wife will suffer emotional hardships as a result of her separation from family members. The AAO acknowledges the emotional difficulties associated with her being separated from her family. However, there is no evidence in the record to establish that this difficulty, together with the additional asserted hardship factors, amount to extreme hardship to the applicant's wife. A waiver of inadmissibility under section 212(h)(2)(B) is only available where the resulting hardship would be beyond what is normally associated with removal. The prospect of relocation does not in itself amount to extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (noting that the emotional hardship caused by severing family ties is a common result of deportation and does not constitute extreme hardship).

The documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.