



U.S. Citizenship
and Immigration
Services



H2

Date: **OCT 15 2012** Office: OAKLAND PARK 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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, 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 Jamaica 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. The applicant seeks 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 spouse and two U.S. citizen children.

On May 1, 2008, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based upon his approved immigrant petition. On April 9, 2009, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601).

In a decision dated August 26, 2009, the field office director found the applicant inadmissible for having been convicted of the offenses of possession of cannabis/20 grams or less. The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly.

On appeal, the applicant asserts that his wife would be left in the United States by herself with the responsibility of being the sole caretaker of their children. The applicant contends that he will suffer medical hardships because of a preexisting condition if he is removed to Jamaica, and fears the crime rate in the area where he would be living. The applicant further asserts that his wife will be unable to support herself and her family on her own, and asks the AAO to favorably exercise discretion so that he may remain in the United States with his family.

In support of the waiver application, the applicant has submitted a medical report dated September 9, 2009, prepared by the applicant's medical doctor, [REDACTED] a declaration of hardship letter from the applicant's wife, [REDACTED] copies of the birth certificates of the applicant's two children; three letters from the applicant's friends attesting to the applicant's good character; copies of state court documents evidencing a mortgage foreclosure proceeding; and a copy of an article published by the Caribbean Voice Newspaper from 2009 regarding Jamaica's crime situation. The entire record has been reviewed in rendering a decision on the appeal.

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

- (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, 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.

The record shows that the applicant was convicted in the Circuit/County Court, Broward County, Florida, on [REDACTED] 1999, of possession of cannabis/20 grams or less and of driving with a suspended license. The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime relating to a controlled substance. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding to be erroneous, the AAO will not disturb the finding of the 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 notes that section 212(h) of the Act provides that a waiver of inadmissibility is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's spouse, son and daughter. Under the statute, hardship to the applicant himself is not relevant and will be considered only if it results in hardship to a qualifying relative. 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).

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.

The asserted hardship factors in this case are the emotional and financial impact to the applicant's wife and children if they remain in the United States without him. The applicant's wife stated in her letter that she has a good relationship with the applicant and that he is a loving husband. She further stated that the applicant is involved in the daily care of their children, as he routinely takes their children to school and prepares their daily meals. Also, the applicant's wife asserted she will encounter financial hardship if he is removed. However, the assertion of financial hardship to the applicant's wife is not consistent with the submitted tax records for 2007, 2006, and 2005, which show the applicant's wife as the primary source of their household income. Additionally, though the applicant stated on appeal that his wife and children would suffer financial difficulties upon his removal from the United States, he has failed to submit documents evidencing how his removal would affect his family's finances.

The AAO notes that the letter by the applicant's wife, as well as the three letters submitted by friends of the family, confirms that the applicant has a close relationship with his wife and children. However, when considering the emotional and financial hardships collectively, the AAO finds that the applicant has not fully demonstrated that the hardship his wife and children will experience as a result of separation is more than the common result of inadmissibility or removal.

In regard to joining the applicant to live in Jamaica, the asserted hardship factors to the applicant's wife and children are living in poverty, difficulties in adapting to a different culture, and threats to their personal safety as a consequence of the country's high crime rate. Additionally, the applicant stated that he will suffer medical hardships based upon his hypertension and dyslipidemia diagnoses. The AAO recognizes the concern that an illness can cause. However, hardship to the applicant himself is not relevant and will be considered only if it results in hardship to a qualifying relative. Here, the current documentation submitted is insufficient to establish that the applicant's medical conditions will result in hardship to his wife and children. The record fails to establish that medical care in Jamaica would be insufficient to treat the applicant's conditions. Moreover, the record does not establish that the applicant must see a doctor on a regular basis to treat his conditions. Also, the record does not establish how such medical conditions and their care would impact the applicant's wife and children in a way that, when considered in the aggregate with the other asserted hardships, could lead to a finding of extreme hardship.

The additional documentation submitted does not support the asserted claims of hardships in regards to relocation. The record also lacks adequate documentation to support these claims. For instance, the record does not include documentation from trusted country conditions sources to support the applicant's claims made pertaining to country conditions in Jamaica including economic issues, safety issues, the high crime rate, or problems with the standards of medical care in the country. Also, the record does not support the applicant's assertion that he and/or his wife would be unable to find employment in Jamaica. Even were the AAO to take notice of general conditions in Jamaica, the applicant has not demonstrated the extent to which certain conditions would affect him or his family members specifically.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's wife and children 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 section 212(h) 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.