

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

[REDACTED]

H2

Date: OCT 24 2012

Office: MOUNT LAUREL, NJ

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 its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, 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 any 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,

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Liberia 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 seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director 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 argues that the director erred in finding no extreme hardship to the applicant's two U.S. citizen daughters. Counsel contends that the director had not fully and fairly considered the hardship factors or properly evaluated and weighed the evidence. Counsel asserts that the director was wrong to have reviewed and relied upon information in the record of applicant's son-in-law without affording the applicant an opportunity to respond to this evidence.

We will first address the finding of inadmissibility.

The applicant was found to be inadmissible for having been convicted of crimes involving moral turpitude. 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.

On December 9, 2003, in Pennsylvania, the applicant pled guilty to and was convicted of forgery, theft by unlawful taking of moveable property, receiving stolen property, and writing bad checks. The judge placed the applicant on probation for three years and ordered that she pay costs and make restitution.

The director found that the crimes of which the applicant was convicted were 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, 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 found 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. The qualifying relatives in the instant case are the applicant's U.S. citizen daughters and her lawful permanent resident father. We note that the applicant has not provided any evidence of whether her mother is citizen or lawful permanent resident of the United States. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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.

In the waiver application dated November 6, 2009, the applicant declared that she entered the United States from Liberia in 1980 and from then has held temporary resident status under the 1986 Amnesty Act, temporary protected status, and deferred enforced departure status. She asserted that, having emerged from a civil war, Liberia is politically and economically unstable, has poor or nonexistent hospitals and schools, and a high crime rate. The applicant declared that her daughters, [REDACTED] and [REDACTED] live with her, and Ida recently separated from her husband and has a two-month-old daughter. The applicant asserted that she financially supported [REDACTED] and in January, [REDACTED] will resume her nursing studies. The applicant declared that [REDACTED] is in the tenth grade and she is [REDACTED] sole support and only functioning parent. The applicant contended that in Liberia there are dangerous and difficult conditions and few opportunities and she could not bring [REDACTED] there.

As to other evidence, in an undated letter, [REDACTED] declared that the applicant babysits for her, which enables her to work to support her young daughter and return to school. She asserted that she and [REDACTED] have only the applicant to help them. [REDACTED] contended in the letter submitted on appeal that her husband [REDACTED] does not support her, she works at a daycare center, and the applicant helps her by taking care of her daughter full time. [REDACTED] asserted in the letter dated February 24, 2010 that her father has not been in her life and she was raised by her mother, with whom she has a close relationship. The applicant asserted in the letter provided on appeal that her daughters live with her, and [REDACTED] husband does not live with them because he had problems with her mother.

Counsel asserts that the director should not have relied upon information in the record of the applicant’s son-in-law without affording the applicant an opportunity to respond to this evidence. However, even if the director had committed a procedural error by failing to afford the applicant with an opportunity to respond to adverse evidence, it is not clear what remedy would be appropriate

beyond the appeal process itself. The applicant has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the applicant the opportunity to supplement the record with new evidence.

The declared hardships to the applicant's daughters, who are now 19 and 26 years old, in remaining in the United States while the applicant lives in Liberia are emotional and financial in nature. [REDACTED] asserted that her mother takes care of her daughter while she is at work and will care for her when she returns to college. The submitted document from the [REDACTED] is consistent with the claim that [REDACTED] enrolled in a community college in 2009. However, the applicant has not submitted evidence of the birth of her granddaughter on appeal, even though the director observed that the applicant had failed to provide a birth certificate of her granddaughter. The applicant has also not provided an adequate explanation for the discrepant information about her son-in-law's living arrangements and relationship with [REDACTED] his adjustment of status application based on the immediate relative petition filed on his behalf by [REDACTED] and whether he is financially supporting his wife and child or taking care of his child while his wife is at work or attending college. Income tax records show that the applicant and her daughters live with the applicant's father and perhaps with her mother as well. We believe that the applicant's daughters will have financial support from their grandparents and be able to live with them should they remain in the United States without their mother. While we acknowledge the applicant's daughters will experience hardship in separation from their mother, they are adults, and their age and level of maturity suggest that their hardship will not be as severe as that of a young child, whose emotional and financial dependence on a parent generally is significant. When the hardship factors are considered together, they do not establish that the hardship to the applicant's daughters in remaining in the United States while their mother lives in Liberia is more than the common or typical results of removal and inadmissibility.

As to the applicant's daughter's relocating to Liberia to live with their mother, the applicant contended that Liberia is politically and economically unstable, has poor or nonexistent schools and hospitals and high rates of crime, and dangerous and difficult conditions and few opportunities. The information in the submitted U.S. Department of State report is consonant with the applicant's contention about the social, economic, and political problems in Liberia. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2007: Liberia* (March 11, 2008). See also the U.S. Department of State, Bureau of Consular Affairs, Travel Alert: Liberia (November 9, 2011). Accordingly, when these hardship factors are considered together they establish that the applicant's daughters will experience extreme hardship in their relocation to Liberia with their mother.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme

hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

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) and of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.