



U.S. Citizenship  
and Immigration  
Services

H2

[REDACTED]

Date: **OCT 26 2012**

Office: ATLANTA, GA

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 Shimway".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Atlanta, 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 the Bahamas 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 asserts that the applicant's U.S. citizen mother-in-law was diagnosed with breast cancer and has been undergoing treatment, and that the applicant's U.S. citizen husband is distressed about having to abandon his mother, who needs his financial and emotional support, or having to live apart from his wife. Counsel argues that the applicant's husband will not be able to work a night shift, and pay a mortgage and household expenses without help from the applicant, and that the applicant's young son will endure hardship in remaining in the United States and separated from his mother. Counsel contends that the applicant's husband and son will have to give up their stable economic situation and access to health care and political stability if they joined the applicant to live in the Bahamas, where 9.3 percent of the population lives below the poverty level, and there are few economic opportunities and a bad political situation. Counsel states that the applicant's husband has never lived outside the United States and has a good job providing health care insurance, a disability plan, a retirement plan, and paid vacation. Counsel contends that the applicant's young U.S. citizen son requires surgery for an abnormal frenulum and will require medical supervision to prevent facial caries or speech abnormalities, and that he will not have access to health care in the Bahamas. Counsel asserts that the applicant receives treatment for depression and adjustment disorder and has no alternate means to adjust status. Counsel argues that the adjudication's officer failed to properly consider the hardship factors in their totality. Counsel states that the applicant's wife is pregnant and expecting a child, who will be another qualifying relative.

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.

The record reflects that the applicant pled guilty to and was convicted in Florida of the following crimes:

<u>Offense</u>	<u>Conviction Date</u>	<u>Disposition</u>
<ul style="list-style-type: none"><li>• Grand Theft</li><li>• Uttering Forged Instruments</li></ul>	September 28, 2001	For the offenses, was imprisoned in jail for 364 days after probation was revoked; restitution
<ul style="list-style-type: none"><li>• Organized fraud/\$20,000 or less</li><li>• Grand Theft</li><li>• Grand Theft</li><li>• Grand Theft</li><li>• Identification/Personal/Fraudulent Use/Possession</li><li>• Identification/Personal/Fraudulent Use/Possession</li></ul>	October 3, 2003	For the offenses, was imprisoned in jail for 364 days; 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. 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.

As to the hardship to the applicant's husband and child, the applicant's husband stated in the letter accompanying the waiver application that he has a close relationship with his wife and will not be

able to afford household expenses without her income. In the affidavit dated April 20, 2010 the applicant's husband stated that he has been married to the applicant since June 21, 2003 and they are expecting their second child on May 21, 2010. He declared that he has no ties to the Bahamas and that his immediate family members reside in Georgia. The applicant's husband asserted that he is a lead 911 communications operator and works from 12:00 A.M. to 8:00 A.M., and sometimes has a 12-hour shift. He declared that his son had surgery for an abnormal frenulum and now requires medical supervision to prevent facial caries or speech abnormalities, and that his mother was diagnosed with breast cancer in September 2009. He stated that his mother underwent chemotherapy and recently had her right breast removed, and must avoid strenuous activities. He stated that his mother is receiving radiation treatment and needs emotional support from him and the applicant, and that the applicant helps his mother perform daily life activities such as eating or taking a bath because his mother cannot use her right hand. The applicant's husband expressed anxiety about the medical care his children would have in the Bahamas; having to separate from his wife, who had seen a doctor due to depression after the birth of their son; the well-being of his unborn child; and his mother's life-threatening cancer.

Other evidence in the record includes the employment letter for the applicant's husband that stated that the applicant's husband has been employed with [REDACTED] since 2006 and is a lead 911 operator, earning \$34,061 annually. His wage statement reflects a bi-weekly income of \$1,006. Their mortgage statement shows their monthly mortgage is \$922, and other invoices in the record for household expenses total \$160.

The asserted hardships to the applicant's husband and son are emotional and financial in nature. The applicant's husband claimed that he will have financial hardship without his wife's income and that he is concerned about his wife, and the care of his three-year-old son and mother if the applicant is no longer in the United States. The letter from medical staff with [REDACTED] dated March 27, 2009 is consonant with the applicant's husband's distress about his wife and son for their letter stated that they have been treating the applicant's wife for depression since December 31, 2008 and her condition may decompensate if she is separated from her son and husband. The staff also expressed their concern about the applicant's son's physical health and psychosocial health if separated from the applicant. They stated that young children become depressed and may not thrive after the loss of their close attachment to their mother or primary caretaker. The applicant's husband's distress about his mother corresponds with his mother's affidavit dated April 20, 2010 in which she asserted that she was not able to work or perform daily activities without assistance and that she lives 15 minutes away from her son, with whom she has a close relationship. Medical records are consistent with the assertion that the applicant's mother-in-law was diagnosed with and received chemotherapy for inflammatory breast cancer in September 2009. The applicant submitted information about inflammatory breast cancer. Thus, when the hardship factors are considered together, the young age of the applicant's son and the emotional dependence which a young child has for a parent, the depression of the applicant's wife, and the cancer of the applicant's mother-in-law, we acknowledge they will cause significant hardship to the applicant's husband in remaining in the United States and separated from his wife will be extreme.

In regard to the asserted hardships of joining the applicant to live in the Bahamas, the applicant's husband stated that his mother is receiving radiation treatment and needs emotional support from him and the applicant, as well as help in performing daily life activities such as eating or taking

baths. The applicant's husband asserted that he has no ties to the Bahamas and his immediate family members reside in Georgia, and in joining the applicant to live in the Bahamas he would have to give up his livelihood. However, the applicant's husband has not discussed whether his family members will be available to provide emotional and physical support to his mother, or shown that his inability to provide for his mother will cause him to experience extreme hardship. While we recognize that the applicant may not be able to obtain in the Bahamas the same job as he holds now, the applicant has not established that her husband will not be able to secure employment there. The applicant's family ties there – her birth certificate reflects her parents worked in professional occupations in the Bahamas as her mother was a social director and her father was a lawyer – may be of assistance. The applicant's husband stated in the affidavit dated April 20, 2010 that his son had surgery to remove the frenulum. No medical records have been submitted that reflects that his son has developed a new health problem requiring health care that is not available in the Bahamas. When the asserted hardship factors and the submitted evidence are considered together, they fail to establish that the applicant's husband will experience extreme hardship in relocating to the Bahamas.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act.

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.