



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

DATE: OCT 31 2012

OFFICE: MIAMI

FILE: [REDACTED]

IN RE: [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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO), and this matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, but the appeal will be dismissed and the underlying application remain denied.

The applicant is a native and citizen of Romania who entered the United States pursuant to a B-1 visitor visa on April 20, 1998. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse.

The Acting District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Acting District Director*, dated February 17, 2006. On appeal, the AAO determined that the applicant had demonstrated extreme hardship to his spouse upon separation, but not relocation, and dismissed the appeal accordingly. *See Decision of the AAO*, dated July 7, 2009.

The applicant has submitted a motion to reopen or reconsider the dismissal of his appeal. Based on the new facts in the record concerning the applicant's spouse's medical condition, the motion to reopen will be granted. On the applicant's motion to reopen or reconsider, counsel for the applicant asserts that the applicant has submitted sufficient evidence demonstrating that the applicant's spouse would suffer extreme physical and financial hardship if she relocated to reside with the applicant in Romania.

In support of the applicant's motion to reopen and reconsider, the applicant submitted updated background information concerning Romania and updated medical records concerning the applicant's spouse.

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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703. Finally, in all such inquiries, the burden is on the alien to establish “clearly and beyond doubt” that he is “not inadmissible.” *Id.* at 709 (citing *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008))

The director found the applicant to be inadmissible for having been convicted of crimes involving moral turpitude. The applicant has not disputed his inadmissibility based upon his convictions for crimes involving moral turpitude in his motion to reopen and reconsider.

The record reflects that the applicant was convicted in Hillsborough County Circuit Court, Florida, on March 21, 2000, of one count of organized fraud, two counts of cashing item with intent to defraud, one count of grand theft in the third degree, six counts of uttering a forged instrument, and six counts of forgery. On the same date, under a different case number, the applicant also pled guilty to one count of organized fraud, four counts of forgery, four counts of uttering a forged instrument, and four counts of cashing item with intent to defraud. The applicant was sentenced to 48 months of probation and 100 hours of community service. The applicant was also convicted on February 26, 2001, in Hillsborough County Circuit Court, Florida, of two counts of cashing item with intent to defraud and one count of grand theft in the third degree. The applicant was sentenced to three years of probation.

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 –

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status.

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

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 applicant is a 46-year old native and citizen of Romania. The applicant's spouse is a 45-year-old native of Romania and citizen of the United States. The applicant and his spouse are currently residing in Hollywood, Florida.

The AAO previously determined that the applicant has demonstrated that his spouse would suffer extreme hardship upon separation from her husband. Based upon the record, the AAO found that the applicant's spouse has been diagnosed with major depressive disorder and relies upon her husband, financially and emotionally, for her care. *See Decision of the AAO*, dated July 7, 2009.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's spouse asserts that she would suffer from financial hardship if she relocated to Romania because she and her husband would have difficulty finding employment. The applicant's spouse contends that she would have a harder time finding employment because she is a woman over 40 years of age. It is noted that the applicant's spouse is a native of Romania who attended primary and secondary education and two years of professional culinary school in Romania. The record reflects that the applicant's spouse has been predominantly employed as a cook in her work experience. The record also reflects that the applicant was employed as a taxi driver in Romania. There is no indication that the applicant and the applicant's spouse would be unable to rely upon their prior work experience to secure employment in Romania. In addition, the record reflects that the applicant and his spouse have ties to Romania, including relatives. There is no information concerning the extent to which the applicant and his spouse could rely upon assistance from relatives upon relocation to Romania. Further, courts considering the impact

of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant's spouse asserts that she cannot relocate to Romania to reside with the applicant because of her medical and psychological ailments. The applicant's spouse contends that the climate in Romania would negatively impact her health and she would have difficulty finding care. The applicant's spouse states that she suffers from chronic leukocytosis, infertility with chronic irregular menses, HSV-1 and HSV-II positive status and dysthymia. It is noted that the letter submitted by the applicant's spouse's physician from [REDACTED] does not include information concerning any follow-up visits or treatment. The physician does state that the applicant's spouse has been diagnosed with dysthymia with possible depression that may be exacerbated by cold weather and decreased sunshine. The applicant's spouse also submitted a letter from a physician stating that she is taking medication for major depressive disorder and depression seems to increase in dark, winter months. It is noted that both of the applicant's spouse physicians discuss the seasonal impact on depression in general terms and there is no indication that the applicant's spouse has personally been diagnosed with any seasonal disorders, either in the United States or during her decades of residence in Romania. There is also no indication that the applicant's spouse would be unable to receive care if she developed any such disorders in Romania. The applicant has submitted background information concerning the culture of bribery in the Romania medical care system, but there is no indication that the applicant's spouse would be unable to continue with her psychological therapy and medications in Romania and otherwise receive treatment for any of her ailments, as necessary. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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 record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Romania.

The AAO has determined that the applicant has demonstrated that his spouse would suffer extreme hardship upon separation from her husband. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon relocation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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 in 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 upon relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this 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 remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the underlying application will remain denied.

ORDER: The appeal is dismissed and the underlying application is denied.