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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **APR 04 2013** Office: MIAMI, FLORIDA

FILE: A [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.

Thank you,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application will be approved.

The applicant is a native and citizen of Jamaica. He 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 been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and has two U.S. citizen children. 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.

The district director concluded that the applicant had failed to establish that he merited a favorable exercise of discretion and did not address whether a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. The district director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 16, 2008. The AAO found that the applicant committed a violent or dangerous crime and he failed to establish extreme hardship. The appeal was dismissed on July 1, 2010.

The applicant has filed a motion to reconsider. On motion, counsel details hardship to the applicant's qualifying relatives and cites case law in support of his claims.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, the applicant has submitted counsel's brief. The record also includes, but is not limited to, a brief from counsel; statements from the applicant's spouse; a statement from the applicant's father; a psychological profile of the applicant's spouse offered by [REDACTED] Ph.D.; a copy of the Jamaica overview published by the U.S. Agency for International Development; a copy of a Congressional Research Service report, Jamaica: Political and Economic Conditions and U.S. Relations; a copy of the Background Note on Jamaica, published by the U.S. Department of State; copies of birth certificates for the applicant, his spouse and his children; letters of employment verification for the applicant and his spouse; pay stubs, tax returns, utilities, bills and other documentation; copy of a rental lease agreement; and court records pertaining to the applicant's convictions. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(2)(A) of the Act states 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.

As mentioned on the initial AAO decision, the applicant was convicted of aggravated battery using a deadly weapon, in violation of section 784.045(1)(a)2 of the Florida Statutes, in the [REDACTED] Circuit Court, on February 18, 2004. The applicant has been convicted of a crime involving moral turpitude and he is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this finding.

Section 212(h) of the Act provides, in pertinent part, that:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

(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 . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and children are the qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable 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 AAO also found that aggravated battery with a deadly weapon is a violent or dangerous crime and finds that he is subject to the requirements of 8 C.F.R. § 212.7(d). The regulation at 8 C.F.R. § 212.7(d) establishes the circumstances under which a favorable exercise of discretion is warranted in the case of an applicant convicted of a violent or dangerous crime:

(d) Criminal grounds of inadmissibility involving violent or dangerous crimes

The Attorney General [now Secretary of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. § 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States,

or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application of adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The concept of exceptional and extremely unusual hardship is addressed by the Board of Immigration Appeals (BIA) in *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), in which the BIA found that many of the factors that are considered in assessing "extreme hardship" should be considered in evaluating "exceptional and extremely unusual hardship." The BIA held, however, that the hardship suffered by the qualifying relative must be "substantially beyond that which would ordinarily be expected to result from the alien's deportation," but need not be "unconscionable." *Id.* At 59-63.

In determining whether the record establishes that a qualifying relative would suffer exceptional and extremely unusual hardship in this matter, the AAO will first examine the record under the extreme hardship standard. If the record establishes that a qualifying relative will suffer extreme hardship, the AAO will then examine the record under the requirements of 8 C.F.R. § 212.7(d).

Counsel states: the AAO failed to consider the impact of relocation on the applicant's spouse's current mental health condition and the potential for psychological crisis due to removal from her home, employment and family; Jamaica suffers from depressed economic conditions, a high unemployment rate, serious criminal problems; she has no family or social ties in Jamaica; she has never lived in Jamaica and does not have any skills that are in demand there; and she and her children would suffer from a lack of educational opportunities and live in poverty without the same social and government support provided in the United States. The record includes information on unemployment, the economy and criminal issues in Jamaica.

Prior counsel has also noted the hardships of relocation on the applicant's children who would move to a country rife with violence and instability, an inferior educational system and disease; and they have no property in Jamaica. Prior counsel states that the applicant's spouse works in a physician's office and she is studying to become a registered nurse.

The record reflects that the applicant's spouse does not have ties to Jamaica. She would be raising two children in Jamaica and the AAO notes the difficult country conditions there. The claims related to loss of educational opportunities for her and her children and lack of employment opportunities are valid. The AAO notes the potential for psychological issues in Jamaica based on her previous experiences detailed below. In reviewing counsel's assertions and the evidence of hardship discussed in its initial decision, the AAO finds that the applicant has established extreme hardship to his spouse should she relocate to Jamaica. The record does not include sufficient evidence to make this finding for his children.

Counsel asserts that: the applicant submitted significant proof of hardship; the applicant and his spouse have a child together and the applicant cares for his stepchild. He refers to a psychological evaluation in stating that the children are securely attached to both parents; the applicant's spouse depends on him emotionally and to care for the children; the applicant is an excellent father and is responsible for household duties; the applicant's spouse was physical, emotionally and sexually abused as a child and teenager; she is experiencing major depression with anxiety disorder due to the applicant's imminent removal; and the applicant's relationship with his spouse has provided her the stability, love and trust that she has been denied in her life and desperately needs. Counsel asserts that the psychological evaluation was improperly discounted and the diagnosis was made through standard psychological testing methods. In reviewing counsel's assertions and the evidence of hardship discussed in its initial decision, the AAO finds that the applicant has established extreme hardship to his spouse and children should they remain in the United States. Based on the evidence presented, the applicant has also established exceptional and extremely unusual hardship to his spouse in the event that she remains in the United States and in the event that she relocates to Jamaica.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as an overall matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case include the applicant's unauthorized period of stay, unauthorized employment and criminal conviction.

The favorable factors for the applicant include his U.S. citizen spouse and children, exceptional and extremely unusual hardship to his spouse, and hardship to his children. The AAO notes that the

applicant's crime was very serious in nature. He hit his father with an aluminum pipe in the head which caused swelling, bruising and lacerations. However, the applicant's father states that he bailed the applicant out of jail; he has reconciled with the applicant and is on good terms with him; he is confident that an incident like this would never occur again; the applicant is not a threat to him or anyone else and what happened was an isolated incident; and the applicant has rehabilitated himself from that single incident. The AAO notes that the incident occurred in June 2003, nearly ten years ago. There is no evidence that the applicant has engaged in any other criminal behavior, and the victim of the crime has testified in support of the applicant.

The AAO finds that the violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the previous decisions of the district director and the AAO will be withdrawn and the application will be approved.

ORDER: The motion is granted and the application is approved.