



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 15 2013**

Office: HIALEAH

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hialeah, 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)(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. On November 22, 2010, the applicant submitted an Application for Waiver of Grounds of Inadmissibility (Form I-601). 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 her U.S. citizen husband and children.

In a decision dated February 28, 2012, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that her U.S. citizen husband and children would experience extreme hardship as a consequence of her inadmissibility. The field office director also denied the waiver application in the exercise of discretion, finding that the applicant's criminal history outweighed the favorable considerations of her case.

On appeal, counsel for the applicant states the field office director erred in finding that the record evidence did not establish that the applicant's bar to admission would result in extreme hardship to her qualifying relatives. Counsel avers that the record evidence outlining emotional, psychological, and economic difficulties to the applicant's U.S. citizen spouse and children demonstrate extreme hardship to her qualifying relatives.

The record includes, but is not limited to: counsel's brief; an affidavit by the applicant's husband; psychological evaluations; medical records; tax documents; birth certificates; a marriage certificate; hardship letters from the applicant's U.S. citizen children; documentation concerning the applicant's terminated removal proceeding; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, 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.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that the applicant has multiple theft and credit card fraud criminal convictions. On January 17, 1992, the applicant was convicted in the Circuit Court of [REDACTED] Florida of grand theft in the third degree, fraudulent use of a credit card, and fraudulently obtaining a credit card. On December 17, 1993, the applicant was convicted in the County Court of [REDACTED] Florida, of petit theft in violation of Florida Statutes § 812.014(2). For this offense, the applicant was sentenced to six months of probation and was fined. On November 20, 1996, the applicant was convicted in the Circuit Court of [REDACTED] Florida of fraudulent use of a credit card in violation of Florida Statutes § 817.61, and grand theft in violation of Florida Statutes § 812.014(2)(c)(1). For these offenses, the applicant was sentenced to six months imprisonment, was placed on probation for one year, and was fined. On April 6, 1998, the applicant was convicted in the Circuit Court of [REDACTED] Florida, of theft. The applicant was sentenced to three days in jail and was fined. On October 6, 2008, the applicant was convicted in the Circuit Court of [REDACTED] Florida of theft to deprive in violation of Florida Statutes 812.014(3). The applicant was sentenced to three months of probation, was fined and ordered to pay court costs.

The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility from these convictions on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the field office 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 begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. 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). In this case, the applicant asserts that denial of her admission will impose extreme hardship upon her U.S. citizen husband and children.

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 the 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 is 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.

Counsel asserts that in the event of relocation, the applicant's spouse would experience extreme hardship. Counsel states that the applicant's husband has a special bond with his wife that is "covered in detail" in the record evidence. The applicant's husband indicates he was born and raised in the United States, and that his parents reside in Florida. There is evidence in the record suggesting the applicant's husband has visited Jamaica. The applicant's spouse mentioned to a psychologist that "life in Jamaica could have the potential of being life threatening to him and his family. There are gangs everywhere; violence does not stop." The applicant's husband submitted an affidavit dated March 21, 2011, in which he indicates that his biggest concern with regards to relocation is the "random acts of violence that constantly happen." In his affidavit, the applicant provides various examples of acts of violence in Jamaica. However, the applicant's spouse does not provide the dates of these incidents, the source of the information, or copies of newspaper articles or other similar country conditions information corroborating these assertions and incidents. The AAO notes that the record includes country conditions documentation submitted in support of a Form I-601 waiver application filed in 2003. Although we acknowledge the relevancy of such documentation in describing conditions in Jamaica, we find that the submitted documentation is outdated in that it fails to reflect the social and political environment in Jamaica as of the date of the appeal. The applicant's spouse does not assert any financial or economic hardships upon relocation to Jamaica.

If the applicant's minor daughter relocates with the applicant and her husband to Jamaica, the applicant needs to establish that their daughter will experience extreme hardship. The applicant's minor daughter, [REDACTED] does not address extreme hardship upon relocation in her undated affidavit. In his affidavit dated March 21, 2011, the applicant's spouse indicates that [REDACTED] would experience educational hardships upon relocation to Jamaica. He indicates that the school system in Jamaica is overcrowded and so poor that the school days have to be divided into two sessions. The applicant's father further indicates that his children will not receive the same education in Jamaica as they would in America. Here, the record does not support the applicant's husband's assertions that his daughter would experience inferior educational opportunities in Jamaica. The record does not contain any documentary evidence indicating that the educational system in Jamaica is deficient, that their daughter will be unable to benefit from that country's education system, or that she would be unable to pursue and complete secondary education in the area where they would be living in Jamaica. When considering the asserted educational hardship factors, the AAO finds that the applicant has not fully demonstrated that the hardship his LPR children will experience is more than

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the common result of inadmissibility or removal. *See generally Matter of Pilch*, 21 I&N Dec. at 632 (“The fact that economic and educational opportunities for the child are better in the United States than in the alien’s homeland does not establish extreme hardship.”).

The applicant also asserts that her daughter [REDACTED] would experience medical difficulties upon relocation given her daughter’s urinary incontinence. The record contains a letter dated March 17, 2011 by [REDACTED] which indicates that the applicant’s daughter has an ongoing problem of urinary incontinence and requires a follow-up evaluation by an urologist. The record also includes medical documentation showing that the applicant’s daughter was hospitalized overnight on December 26, 2010, for urinary incontinence. The hospital records reflect that the applicant’s daughter was treated and that no episodes occurred during her hospitalization. The AAO recognizes the concern that an illness can cause, especially in the case of a child. However, the current documentation submitted is insufficient to establish that the applicant’s daughter requires specialized treatment in the United States in such a way that relocation would result in extreme hardship. The record fails to establish that medical care in Jamaica would be insufficient to treat the applicant’s medical condition. Moreover, though the record evidence indicates that the physicians treating the applicant’s daughter have recommended she seek treatment with an urologist, there is no evidence indicating that she has sought out this specialized care, or the unavailability of urologists in the country of relocation. Lastly, the record does not establish how her medical condition and its care would impact the applicant’s daughter in a way that, when considered in the aggregate with the other asserted hardships, could lead to a finding of extreme hardship upon relocation to Jamaica.

Based upon the record evidence before the AAO, the applicant in this case failed to establish that relocation to Jamaica would result in extreme hardship to a qualifying family member for purposes of relief under sections 212(h) of the Act.

With regards to extreme hardship upon separation from the applicant, counsel asserts that the applicant’s husband would experience financial hardship in the United States if the applicant is removed to Jamaica. The applicant’s spouse asserts in his declaration dated March 21, 2011, that the applicant is the “only one working right now, and with [his] level of education being only a high school degree, [he] does not have the skills to completely support [his] family solely on [his] own.” However, counsel submitted a psychological evaluation of the applicant’s husband prepared by [REDACTED] Ph.D., in which she indicates that she interviewed the applicant’s husband on March 29, 2011, and he mentioned that he “works in ironwork (metal and glass glazier) and is a member of the [REDACTED].” Moreover, in her undated declaration in support of the waiver application, the applicant’s daughter [REDACTED] indicates that she does not want her mother to return to Jamaica, as all she has is her mother and father but “he is always working.” Based on these inconsistent statements, the AAO is unable to determine the level of financial hardship upon the applicant’s husband in the scenario of separation from the applicant. Without supporting documentation, the assertions of counsel are insufficient to meet the burden of proof in these proceedings. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983). Though the AAO acknowledges the submission of utility bills and income tax records for the year 2010, such documentation is not conclusive regarding the level of financial hardship upon the applicant’s spouse if separated from the applicant given the lack of information about his income, contributions to the household, and potential financial difficulties if he is separated from his wife.

Additionally, the AAO notes that the submitted psychological evaluation does not address how the applicant's spouse mental health would be affected if he were to be separated from the applicant. There is evidence in the record indicating that the applicant's older daughter is residing in New York State to pursue college studies. Therefore, if separated from the applicant, her spouse would have to provide daily care for their minor child. Here, the record does not indicate that the applicant's spouse would encounter difficulties in being a single parent raising a minor daughter.

With regards to the applicant's daughter's episodes of urinary incontinence, the record does not contain sufficient evidence indicating that this condition would result in her experiencing extreme hardship if separated from her mother. As previously stated, there is no evidence in the record indicating the level of care the applicant's daughter needs, and there is no evidence establishing that without the applicant's care, her daughter's condition would impact her daily life in a way that would amount to extreme hardship. The record evidence reflects that the daughter would remain in the United States with her father and her maternal family. The record does not reflect that the applicant's family members would be unable or unwilling to assist and provide care to the applicant's daughter if necessary.

The AAO acknowledges the statements made by the applicant's children regarding the close relationship they have with their mother and the effect separation would bring upon the family unit. In statements submitted in support of the waiver application, the applicant's daughters indicate that she is a "great mother," that the applicant takes care of their daily needs and assists with homework, and they both indicate that her mother's possible removal would affect them emotionally. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the difficulties described by the applicant's husband, and as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In *Hassan v. INS*, *supra*, it was held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most aliens who are removed.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she merits a waiver as a matter of discretion.

In proceedings for an application for a 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.