

(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

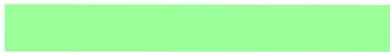
APR 15 2013

Date:

Office: VIENNA

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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,

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

Ron Rosenberg

Acting Chief, Administrative Appeals Office

Page 2

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

The applicant is a native and citizen of Poland 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 a crime involving moral turpitude. The applicant is the husband of a U.S. citizen. On February 14, 2012, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. §§ 1182(h), in order to reside in the United States with his U.S. citizen spouse.

In a decision dated April 3, 2012, the field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601, waiver application accordingly.

On appeal, counsel for the applicant contends that the evidence outlining medical, psychological, and emotional difficulties demonstrates extreme hardship to the applicant's qualifying relative. Counsel submits new evidence on appeal consisting of medical records, disability information, and financial documentation.

The record includes, but is not limited to: counsel's brief; copies of the applicant's spouse's medical records; affidavits from the applicant's friends; medical documentation; copies of birth certificates; a marriage certificate; copies of death certificates; affidavits from the applicant's wife's children; a psychological report; and documentation concerning 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, or

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 shows that on October 25, 2010, the applicant was convicted in the [REDACTED] of assaulting and threatening another with bodily harm, a misdemeanor in violation of [REDACTED]. For this offense, the applicant was fined 2000 Polish zloty, which is equivalent to a fine of \$630.12 in the United States. The field office director found the applicant inadmissible 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. As the applicant does not dispute inadmissibility from this conviction 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, that:

(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. In this case, the applicant asserts that denial of his admission will impose extreme hardship upon his U.S. citizen wife. 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).

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 now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The record reflects that the applicant's wife is a 65-year-old naturalized citizen of the United States. The applicant married his wife on December 26, 2009, in [REDACTED]. The applicant's

wife has resided in the United States for 25 years, and her four children and eight grandchildren also reside in the United States.

With regards to hardship resulting from relocation to Poland, counsel indicates that the applicant's wife would experience emotional, medical, and psychological hardships if she relocates to that country. Counsel states that the applicant's wife's medical condition has deteriorated since the filing of the waiver application, and that she is going to require additional surgeries due to recently discovered medical complications. The record includes a letter dated September 12, 2011 by [REDACTED] in which she states that the applicant's wife has received medical treatment since November 2006 for bilateral shoulder pain, weakness of left upper extremity requiring surgery, chronic hyperlipidemia, hypertension, elevated liver function, chronic lower back pain, lumbosacral radiculopathy, and anxiety. [REDACTED] mentions that given her conditions, the applicant's wife requires frequent medical attention and accurate support. The record contains medical documentation demonstrating that the applicant's wife underwent right shoulder rotator cuff surgery in 2004, which was unsuccessful as it deteriorated within several months, resulting in chronic pain and loss of function. The record further reflects that the applicant underwent a second surgery to repair her right shoulder in November 2009. The documentation indicates that the applicant's right shoulder "is doing well;" however, the applicant's wife was diagnosed on May 14, 2012, with cuff tear arthropathy on her left shoulder. The applicant's wife's treating Orthopedist since October 2009, [REDACTED] indicates in his report dated May 25, 2012 that the applicant's wife's left shoulder has poor function, and that she was further diagnosed with left hip arthrosis with effusion. Given her medical conditions, [REDACTED] has recommended a variety of treatments and surgeries to help alleviate her pain and increase the functions and mobility of her left shoulder.

In her undated statement submitted on appeal, the applicant's wife indicates that relocation to Poland would result in her not having a place to live. She further indicates that she does not have medical insurance in Poland that would "cover doctor's care, medical treatments, or operations." The applicant's wife states that she relies on Medicare and Supplemental Social Security to cover her health-related expenses and that she has received disability payments due to a work-related injury. In a letter dated May 28, 2012, the applicant's wife's daughter states that her mother is experiencing medical difficulties, that she requires surgery, and that she is experiencing pain and is limited in her daily tasks as she is not able to lift her arm. The applicant's wife's daughter, [REDACTED] further indicates that were her mother to relocate to Poland, her medical conditions would deteriorate because of the shortage of doctors in that country, and states that her mother would be unable to undergo surgery to repair her shoulder because she does not have medical insurance in Poland. The AAO recognizes the applicant's wife's multiple medical conditions, her need for surgery, and her relationship with [REDACTED] and [REDACTED] both of whom have treated her for a number of years and are familiar with her medical conditions and treatment.

Regarding emotional hardships upon relocation, the applicant's wife indicates on appeal that she has been residing in the United States for 25 years and that her children and grandchildren reside in the United States. In an affidavit dated January 6, 2012, the applicant's wife indicates that she maintains a close, loving relationship with her grandchildren and that she provides emotional and practical support to her immediate family members. The applicant's wife's daughter indicates in her letter dated May 28, 2012 that her family has a very close relationship and, that with the exception of her

brother who resides in California, all of her siblings live “within driving distance.” She mentions that her mother “is the glue that holds [the family] together.” The applicant’s wife’s daughter states that her mother is always present for the important days of the family and she helps care for her grandchildren. She states that her mother is an essential part of her life and that she cannot imagine not being able to spend time with her.

The applicant’s wife states that relocation to Poland would signify separation from his family and friends. Were the applicant’s wife to relocate to Poland, she would have to face the prospect of losing her medical insurance and earning a sufficient income to be able to obtain health insurance in that country. Relocation would also signify the disruption of her treatment with [REDACTED] and [REDACTED], both of whom have treated her for a number of years and are familiar with her medical conditions. Therefore, the record reflects that the applicant’s wife has been residing in the United States for 25 years, suggesting relocation would require adjustment. The applicant’s spouse would have to leave her community and the two physicians familiar with her diagnosis and treatment, and her family, including her four children and eight grandchildren. She would also experience concern for her grandchildren’s well-being, as the evidence in the record indicates that she helps care for them. Accordingly, when considering all of the asserted hardships cumulatively, the record reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were she to relocate to Poland to reside with the applicant.

The asserted hardship factors to the qualifying relative in the event of separation from the applicant are the emotional and medical difficulties to the applicant’s wife resulting from his denial of admission. In her affidavits submitted in support of the waiver application, the applicant’s wife states that she met the applicant online in June 2009 and that she married the applicant on December 26, 2009. The applicant’s wife indicates that the applicant traveled to the United States in October 2009 and cared for her after her right-shoulder surgery. She states that the applicant took care of daily chores around the house and took her to physical therapy. The applicant’s wife indicates that her husband is a good, honest man and that his respect towards her family made her realize she wanted to marry him. The applicant’s wife asserts that the applicant’s denial of admission into the United States would cause her undue hardship in that “[they] shouldn’t be living apart as [they] are not young anymore [and] just want to be together and help each other.” She further asserts that her health is deteriorating and that “[she] remembers how good he was when he came to the United States and cared for [her] after the operation of her right shoulder.” The record also includes an affidavit by the applicant’s wife’s daughter [REDACTED] in which she states that her family’s relationship with the applicant is based on mutual respect, as he “is a pleasure to spend time with” and is patient and kind. The applicant’s wife’s daughter further asserts that she recognizes the emotional difficulties her mother is experiencing because of the separation from the applicant.

Here, the AAO finds that the hardships related to separation presented in this case do not rise to the level of extreme hardship. The AAO acknowledges that the applicant’s spouse would experience emotional difficulties as a result of separation from the applicant, but finds that the evidence does not demonstrate that this hardship is extreme. The AAO also recognizes the submission of a psychological report indicating that the applicant’s wife is experiencing anxiety as a result of separation from her husband. However, the record evidence as presently constituted indicates that the applicant’s qualifying relative faces no greater hardship than the unfortunate but common difficulties arising whenever a spouse is denied admission. The Board has long held that the

common or typical results of inadmissibility do not constitute extreme hardship, and has listed separation from family members and emotional difficulties as factors considered common rather than extreme. *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). 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).

The applicant's wife noted her medical difficulties and the care she received from the applicant in November 2009. However, the record does not contain sufficient documentation establishing that without his assistance, she would experience extreme hardship. Though the record reflects that the applicant requires surgery to repair her left shoulder, the applicant's wife has not indicated the level of medical care and attention she currently needs. Additionally, the record does not contain any evidence indicating that the applicant's wife depends on him for her daily care. Furthermore, there is no evidence in the record from which to conclude that the applicant would be the sole caretaker of her spouse after her surgery, and that her spouse has no other family members willing to assist with her care. Rather, the record reflects that three of the applicant's wife's four children reside close to her, and it has not been asserted that they would be unable to care for their mother should she need assistance. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Though the AAO is sympathetic to the applicant's wife's circumstances, the record evidence is insufficient to demonstrate extreme hardship to the applicant's qualifying relative if her husband is denied admission. Put another way, while it is understood that the separation of qualifying relatives often results in emotional challenges, the applicant has not distinguished his wife's emotional and medical hardships upon separation from the applicant from that which is typically faced by the qualifying relatives of those deemed inadmissible.

Therefore, 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. Additionally, even assuming that the applicant had demonstrated on appeal he meets the statutory requirements for a section 212(h)(1)(B) waiver by showing extreme hardship to a qualifying relative, the applicant would still need to demonstrate he meets the requirements of 8 C.F.R. § 212.7(d) to warrant a favorable exercise of discretion, as he has been convicted of a violent or dangerous crime.

In proceedings for an application for a waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility rests entirely 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.