



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: APR 25 2013

Office: NEWARK

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, Newark, New Jersey, 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 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 a crime involving moral turpitude. The applicant is married to a U.S. citizen. The applicant filed an Application for a Waiver of Ground of Inadmissibility (Form I-601) in conjunction with his application for adjustment of status in order to remain in the United States with his U.S. Lawful Permanent Resident (LPR) spouse and children.

In a decision dated December 1, 2011, the field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 waiver application accordingly.

On appeal, counsel for the applicant contends that the applicant merits a favorable exercise of discretion and that the field office director erred in denying the applicant's waiver application. Counsel asserts that the evidence outlining emotional and financial difficulties demonstrates extreme hardship to the applicant's qualifying relatives.

The record includes, but is not limited to: counsel's brief; the applicant's statement; a statement by the applicant's wife; college enrollment records; copies of pay stubs and income tax returns; proof of citizenship and lawful status of the applicant's family members; an employer reference letter; a letter from a probation officer from the Probation Services Division of the Superior Court of New Jersey; financial and mortgage loan documentation; 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, that:

(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 shows that on January 6, 2005, the applicant was convicted in the New Jersey Superior Court, Passaic County, of aggravated assault by auto causing serious bodily injury in the third degree in violation of section 2C:12-1c(2) of the New Jersey Statutes. In New Jersey, a crime of the third degree is punishable by a term of imprisonment between three and five years. See N.J. Stat. Ann. § 2C:43-6. The record reflects that the applicant was sentenced to 270 days in jail, probation for a period of three years, and 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 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:

(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. LPR wife and children. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 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.

With regard to remaining in the United States without the applicant, the applicant's wife states in a declaration dated February 25, 2009, that her husband is the family's sole provider and that their family's "room and board depends on him." The applicant's wife further states that their two daughters are full-time students attending college and that "without [the applicant's] income [their] daughters would not be able to continue their college studies." The applicant's daughters provided sworn statements, also dated February 25, 2009, in which they state that they depend entirely on the applicant for college tuition and school related expenses. The applicant's daughters further mention that though they both work part-time as computer lab assistants, their income is not sufficient to cover college tuition. They further state that if the applicant is removed to Poland, they would have to leave school and find full-time jobs that require no professional preparation in order to provide for their family.

Counsel for the applicant asserts that the applicant's wife is not employed and that the applicant's family relies solely on the applicant's income for all of their financial support. The record includes evidence establishing that the applicant has been employed as a Machine Operator with [REDACTED] since November 2002 and that in 2009 he earned \$17.79 an hour. The record also includes income tax returns for the years 2003-2010 which corroborate counsel's assertions and indicate that the applicant is the sole provider for the household of five. The applicant submitted on appeal a mortgage statement which reflects that the principal balance on the applicant's home mortgage loan was \$18,503.60 in January 2012. Additionally, the AAO notes that the record evidence submitted on appeal regarding financial hardship to the applicant's daughters reflects cash and money order payments made to [REDACTED] for tuition costs. However, the AAO also notes that the applicant's daughter [REDACTED] received financial aid in the form of federal grants and student loans for the 2012 spring semester. Though the applicant and his wife have asserted that the applicant's wife and daughters depends on him for financial support, there is no evidence in the record indicating that the applicant's wife is unable to secure employment in the United States to support the household in the event of separation from the applicant. Neither counsel nor the applicant has asserted that the applicant's wife is unable to obtain employment because of a preexisting condition or other impediment. Likewise, no evidence has been provided regarding his wife's lack of education or skills to acquire a job. 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)). Additionally, the record reflects that one of the applicant's daughters is eligible to receive grants, scholarships, and student loans to cover tuition costs.

The AAO acknowledges that the applicant's wife and daughters will experience some emotional difficulties if they remain in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the difficulties described by counsel and the applicant's daughters, and as demonstrated by the evidence in the record as presently constituted, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. 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).

Thus, when the evidence of hardship in the record is considered collectively, we find that the applicant has not shown that his spouse and children will endure extreme hardship if they remained in the United States without him.

With regard to joining the applicant to live in Poland, counsel states that the applicant's immediate family members reside in the United States and that relocation would result in hardships to the applicant's qualifying relatives. The record evidence shows that the applicant's daughter's uncles, aunts, and grandmother reside lawfully in the United States. However, other than a generalized assertion regarding family unity, the record does not include evidence indicating how relocation would affect the applicant's qualifying relatives in a way which would result in extreme hardship to them. That is, the record evidence does not include any information or detail about the relationship between the applicant's qualifying relatives and the family members who reside in the United States.

The additional documentation submitted does not support the asserted claims of hardships in regards to relocation. The record also lacks adequate documentation to support these claims. For instance, the record does not include documentation from trusted country conditions sources to support a finding of inadequate employment opportunities or safety concerns in Poland. Also, the record does not support the applicant's assertion that her husband would be unable to find employment in that country. Though the AAO acknowledges that counsel incorporated in his brief an excerpt from the 2010 U.S. Department of State Country Conditions Report, which mentions that the national minimum wage in Poland is \$444.00 per month, neither counsel nor the applicant has demonstrated that the only employment opportunities available to the applicant in Poland pay minimum wage. Additionally, there is no evidence in the record showing that the applicant's daughters would be unable to enroll in a college or university in Poland. Also, there is no evidence demonstrating the unavailability of university degrees in Poland related to their respective field of study. Even were the AAO to take notice of general conditions in Poland, the applicant has not demonstrated the extent to which certain conditions would affect him or his family members specifically. That is, neither counsel nor the applicant have asserted, and the record does not otherwise demonstrate, that the applicant's qualifying relatives are so accustomed to and integrated into their community that transitioning to life in Poland would result in extreme hardship.

Thus, when the evidence of hardship in the record is considered collectively, we find that the applicant has not shown that his spouse and children will endure extreme hardship if they relocate to Poland to reside with him. Accordingly, the applicant has not demonstrated that the emotional hardships to his qualifying relatives or that the country conditions of the country of relocation meet the hardship requirements of section 212(h)(1)(B) 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 his qualifying relatives, 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. In most discretionary matters, the alien bears the burden of proving eligibility simply by showing 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). However, the AAO would not find, based on the facts of this

particular case, that the applicant merits a favorable exercise of discretion solely on the balancing of favorable and adverse factors. The applicant's conviction indicates that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

The applicant was convicted of aggravated assault by auto causing serious bodily injury. The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department 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 for 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.

Here, the AAO finds that a conviction under New Jersey Statutes § 2C:12-1c(2), which requires a defendant to operate a motor vehicle under the influence of alcohol or a controlled substance and, as a result, causes serious bodily injury to another person, constitutes a dangerous crime within the meaning of 8 C.F.R. § 212.7(d) and the plain meaning of the term "dangerous." Consequently, the heightened discretionary standards found in that regulation are applicable in this case. However, because the applicant failed to meet the lower "extreme hardship" standard in connection with his waiver of inadmissibility under section 212(h) of the Act, the AAO need not consider whether the documentary evidence establishes that the applicant's denial of admission would result in exceptional and extremely unusual hardship.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains 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.