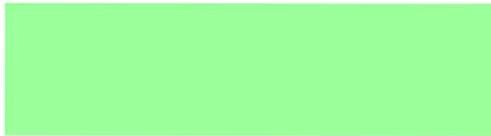


(b)(6)

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

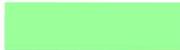


U.S. Citizenship
and Immigration
Services

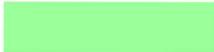


Date: **AUG 01 2013**

Office: OAKLAND PARK

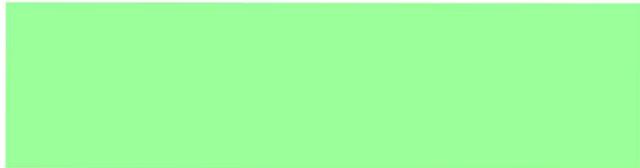
FILE: 

IN RE:

Applicant: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Israel who was found inadmissible 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 crimes involving moral turpitude. The record reflects that the applicant entered the United States as a B-2 visitor in January 1998 with authorization to remain until July 1998, and has not departed. The applicant seeks a waiver 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 parent.

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. The application was denied accordingly. *See Decision of the Field Office Director* dated September 24, 2012.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the field office director abused his discretion, did not give proper attention to the case, and that extreme hardship to the qualifying relative has been proven. With the appeal counsel submits a brief. The record contains an affidavit from the applicant; a document in Hebrew that counsel identified as from the [REDACTED] medical information for the applicant and his mother; a letter from a family therapist; and a declaration from the applicant's mother. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The Board of Immigration Appeals (BIA) 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 on [REDACTED], 2010, the applicant was convicted in the Circuit Court of the Twentieth Judicial Circuit in [REDACTED] Florida, of False and Fraudulent Insurance Claims to defraud an insurer in violation of Florida Statutes § 817.234, a felony of the third degree. A felony of the third degree is punishable by a term of imprisonment not exceeding five years and a fine up to \$5,000. See Florida Statutes § 775.082 and 775.083. The applicant was sentenced to 48 months of probation, a \$250 fine, and restitution (Case No. [REDACTED]).

At the time of the applicant's conviction, Florida Statutes § 817.234 provided, in pertinent part:

817.234 False and fraudulent insurance claims.—

(1)(a) A person commits insurance fraud punishable as provided in subsection (11) if that person, with the intent to injure, defraud, or deceive any insurer:

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;

2. Prepares or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;

....

11. If the value of any property involved in a violation of this section:
(a) Is less than \$20,000, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that "Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an

ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 U.S. 223, 232 (1951). Accordingly, we find that the applicant’s conviction under Florida Statutes § 817.234 is a crime involving moral turpitude. The applicant does not contest his inadmissibility on appeal.

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

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...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 established to the satisfaction of the [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 applicant is seeking 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. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s United States citizen parent.

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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Counsel asserts that the field office director failed to consider elements of hardship in the aggregate and did not address factors presented by the applicant. Counsel contends that the director did not consider the emotional well-being of the applicant's mother and that she would not be able to visit the applicant, or the financial hardship of not counting on the applicant for support. Counsel contends that given the age of the applicant's mother and the cost of airline tickets it would be a hardship for her to visit family in the United States if she relocated to Israel. In a previous brief counsel asserted that it is difficult for the applicant's mother to relocate due to her age and more than 30 years in the United States.

The applicant's mother states that she suffers from medical conditions so she relies on the applicant for support. She states that she has a circulatory problem in her legs that is painful and has

permanent injuries to her knees, neck and hand from an auto accident. She states that she cannot physically or financially move to Israel and without the applicant would be deprived of companionship and emotional and financial support.

A 2010 letter from a licensed family therapist states that the applicant's mother is grateful for the support and comfort of being with the applicant after a long separation and that both have health issues for which they need each other. The letter also states that the applicant's mother feels her emotional stability depends on the applicant being with her for support.

The record contains medical documentation from 2005 following the mother's auto accident that contains the notation "it appears the patient has sustained permanent impairment." Medical records from 2007 show a procedure related to urinary incontinence and records from 2009 show degenerative disk disease. There is a 2009 record from an orthopedic center as well as outpatient discharge instructions and a medication list from 2010.

The AAO finds that the record establishes that the applicant's qualifying parent would experience extreme hardship if she were to relocate to Israel to reside with the applicant. Counsel contends that it would be difficult for the applicant's mother to relocate after long residence in the United States and that given her age and the cost of airline tickets it would be a hardship for her to then visit family in the United States. Counsel also submitted a Hebrew-language document that he states shows the applicant's mother would wait several months until receiving government assistance if she relocated to Israel. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

However, the record reflects that the applicant's mother, who is now 66 years old, entered the United States in 1985 and became a U.S. citizen in 1996. The AAO thus finds that given the mother's age, length of residence in the United States, and health issues, she would experience extreme hardship if she were to relocate abroad to reside with the applicant.

The AAO finds, however, that the record fails to establish that the applicant's mother would suffer extreme hardship as a consequence of being separated from the applicant. Counsel and the applicant's mother assert she would experience emotional hardship, but the letter provided from the family therapist does not establish that the hardships the applicant's mother would experience are beyond the hardships normally associated with separation when a loved one is removed.

Counsel and the applicant's mother assert the mother needs the applicant's presence due to her health issues. In support of these assertions counsel submitted copies of medical records for the applicant's mother from 2005, 2007, 2009 and 2010. The records contain medical terminology and abbreviations that are not easily understood and do not contain a clear explanation of the mother's current medical condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical

condition or the treatment needed, or whether such treatment requires the applicant's physical presence in the United States.

Counsel and the applicant's mother state that the mother depends on the applicant financially, but no documentation has been submitted establishing the mother's current income, expenses, assets, and liabilities or her overall financial situation, or the applicant's contribution, to establish that without the applicant's physical presence in the United States the applicant's mother would experience financial hardship. 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)). 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, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

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 from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a loved one is removed from the United States and/or refused admission. Although the AAO is not insensitive to the mother's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.