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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: DEC 0 9 2013 Office: HIALEAH 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
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hialeah, 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 remains denied.

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. 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 Waiver of Grounds of Inadmissibility (Form I-601), 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.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established and dismissed the appeal. *Decision of the AAO*, dated April 15, 2013.

On motion, counsel submits letters from the applicant, and the applicant's spouse and children, and additional medical evidence related to the applicant's daughter. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant has submitted new documentary evidence to support her claim, the motion to reopen will be granted.

The record includes, but is not limited to: counsel's brief; letters from the applicant, her spouse, and their U.S. citizen children; an affidavit by the applicant's husband; psychological evaluations; medical records; financial documents; documents establishing identity and family relationships; documentation concerning the applicant's terminated removal proceeding; documentation regarding the applicant's criminal history; and photographs. 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 –
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> > (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....
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> 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 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 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 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 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 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 her inadmissibility 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 [now Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –
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> . . .

> (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 [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-Moralez,* 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 1292, 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.

On motion, counsel submits a new letter from a medical professional regarding the medical condition of the applicant's daughter. Dr. in his letter dated April 25, 2013, states that the applicant's daughter has an ongoing medical condition of urinary incontinence of unknown origin, that she was previously evaluated at a hospital for this condition, and that a urology follow-up consultation was recommended. This letter's content is similar to his letter dated March 17, 2011, submitted in support of the applicant's Form I-601. As the AAO noted in its previous decision, the record does not contain sufficient evidence indicating that the applicant's daughter's medical condition, considered with other asserted hardships, would cause her extreme hardship if she were separated from the applicant. No evidence in the record indicates 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.

Counsel also submits letters from the applicant, the applicant's spouse, and the applicant's two children, who describe the difficulties that they would face if the applicant's waiver application is not approved and the applicant is separated from them. Although the assertions contained in these letters are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence regarding the hardships that they may encounter if they are separated from the applicant. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

In addition, with respect to hardship the applicant's younger daughter may experience on relocation to Jamaica, in its appeal decision the AAO noted that the evidence submitted was insufficient to

establish that she requires specialized treatment in the United States in such a way that relocation would amount to hardship that, considered with other asserted hardships in the aggregate, could be considered extreme. Counsel submits no new evidence related to the applicant's daughter's medical treatment on motion to address this insufficiency. The record fails to establish that medical care in Jamaica would be inadequate to treat the applicant's daughter's medical condition.

Counsel also states in his letter accompanying the motion that the previously submitted psychological report shows that the family would experience extreme hardship in Jamaica, because crime there has escalated to the point that it is unsafe to travel at night. However, there is no documentary evidence in the record to corroborate counsel's statement or the statement in the psychological report. Concerning the unsafe conditions in Jamaica, the AAO previously acknowledged the applicant's husband's concerns but noted that he did not provide the dates of the specific incidents he mentions, the source of his information, or copies of newspaper articles or other country-conditions resources corroborating his assertions. The AAO found that while the record includes country-conditions documentation submitted in support of the applicant's Form I-601 waiver application filed in 2003, that documentation is outdated; it fails to reflect the current social and political environment in Jamaica. Counsel submits no new evidence to corroborate assertions of current unsafe country conditions in Jamaica with this motion.

The record, reviewed in its entirety, including the additional information submitted on motion, and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse or children will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected disruptions and difficulties arising whenever a spouse or a parent is removed from the United States. Although the AAO is not insensitive to the situation of the applicant's spouse and children, the record does not establish that the hardship they would face rises to the level of extreme as contemplated by statute and case law.

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 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 motion to reopen is granted and the underlying application remains denied.