

(b)(6)



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: DEC 18 2013

OFFICE: NEWARK [REDACTED]

IN RE: [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) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:
[REDACTED]

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,

[Handwritten signature]

f.
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The AAO affirmed its decision on a motion to reopen. This matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted and the prior AAO decision is affirmed.

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry to the United States by fraud or willful misrepresentation. The applicant was also found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to a qualifying relative upon separation and denied the application accordingly. *See Decision of the Field Office Director*, dated September 29, 2011. On appeal, the AAO also determined that the applicant failed to establish extreme hardship to a qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated January 11, 2013. On motion, the AAO determined that the applicant had established extreme hardship to a qualifying relative upon relocation and dismissed the appeal accordingly. *See Decision of the AAO*, dated October 2, 2013.

The applicant has submitted a second motion to reopen or reconsider the dismissal of his appeal. On the applicant's motion, counsel for the applicant asserts that the applicant has submitted additional documentary evidence to establish extreme hardship to his spouse upon separation.

In support of the applicant's motion to reopen and reconsider, the applicant submitted financial documentation and medical documentation concerning the applicant's mother-in-law, medical documentation concerning the applicant's spouse, financial documentation concerning the applicant and his spouse, affidavits from his spouse and mother-in-law, and background information concerning the absence of a father and postpartum depression. The entire record was reviewed and considered in rendering a decision on the motion.

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.

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 –

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status.

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 applicant does not dispute the AAO's prior inadmissibility finding, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based upon his conviction for crime/crimes involving moral turpitude.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such

an alien...

The applicant does not dispute the AAO's prior inadmissibility finding, pursuant to 212(a)(6)(C)(i) of the Act, for having procured admission to the United States through fraud or misrepresentation.

As the applicant's waiver application under section 212(i) of the Act is the most restrictive of the waivers for which he is applying, his appeal will be adjudicated in accordance with this section. A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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 record reflects that the applicant is a 42-year-old native and citizen of the United Kingdom. The applicant’s spouse is a 37-year-old native and citizen of the United States. The applicant is currently residing with his spouse, children, and mother-in-law in [REDACTED] New Jersey.

The applicant’s spouse asserts that the applicant is the only earner in their family, as she cares for their three children and is pregnant with their fourth child. The applicant’s spouse also asserts that she has been out of the work force for six years, due to termination, and cannot work for her prior employer or any affiliated company.

The record includes an employee separation and release for the applicant’s spouse dated January 11, 2010, indicating a last day of employment of February 5, 2010, a separation from the work force of less than four years for the applicant’s spouse. The separation and release agreement does not indicate that the applicant’s spouse was terminated from her prior employment with [REDACTED]

[REDACTED] In addition, despite claims by counsel and the applicant’s spouse, the agreement does not indicate that the applicant’s spouse is unable to work for the company or its affiliates in the future; though it states that the applicant’s spouse is not entitled to anything further, including reinstatement, it does not indicate that she would be barred from such employment. There is also no indication that the applicant’s spouse, with her nearly seven years of experience as a manager in the retail industry, including a U.S. Area Manager, would be unable to secure employment with another company. As noted, the applicant’s previous employer indicated a base salary of \$104,856 for the applicant’s spouse and a payment of \$170,000 upon separation. The record also

reflects that two of the applicant's spouse's children are currently in daycare and there is no indication that, upon securing employment, she would be unable to obtain care for all of her children.

The applicant submitted an expense sheet indicating household bills in excess of six thousand dollars in a month. The applicant's spouse asserts that the applicant is the only financial earner in their family and would have a difficult time securing employment to support their family upon relocation to the United Kingdom. The applicant's spouse contends that she and the applicant assist her mother in her mortgage, upkeep, and bills, so they cannot rely upon her mother for financial assistance. The applicant's spouse's mother asserts that she has mortgage and credit card payments and would be unable to keep up with the house without the finances and labor of the applicant. The applicant's spouse's mother also contends that she has three other children, but that they are just getting by and are unable to provide her with assistance.

The applicant's 2012 tax return indicates a gross income of -\$64,384 for his household. The applicant's spouse's mother's 2012 tax return indicates a gross income of \$125,232. There is no indication as to how the applicant's family, with a negative gross income, has been able to afford monthly household payments in excess of six thousand dollars a month, in addition to providing of financial assistance to applicant's mother-in-law. Further, as noted previously, the letter contains a letter from the applicant's spouse's sister stating that she, her mother, and another sister, would provide the applicant's spouse with assistance. The record does not contain any information concerning any assistance they have provided or would provide, as necessary.

The applicant's spouse asserts that she wants her family to stay together and it would be a nightmare to raise her children on her own. The applicant's spouse contends that the applicant is very connected to their children, so that his absence in their life would devastate them. The record contains background information concerning the absence of fathers and the impact on children and single mothers. It is noted that the applicant's children are not qualifying relatives in the context of this application, so that any hardship they would suffer will be considered only insofar as it affects the applicant's spouse. It is also noted that the applicant's spouse currently resides with her mother and, as noted, her siblings have indicated a willingness to provide her with assistance.

It was previously noted that the record contains evidence that the applicant's spouse suffered from postpartum depression following the birth of her second and third children, for which she was taking medication. The record contains a physician's letter, dated August 25, 2011, stating that the applicant's spouse was being treated for postpartum care and depression, for which she was prescribed Lexapro. As also noted, the record does not contain updated reports concerning her postpartum depression.

The record contains a psychological assessment of the applicant's spouse stating that the applicant's spouse indicated that she was raped in college, resulting in a post-trauma reaction. The assessment concluded that the applicant's spouse was experiencing symptoms of anxiety and depression that did not meet the criteria for diagnosis, but that could further develop depending upon additional stressors. It is acknowledged that separation from a spouse nearly always creates

hardship for both parties and the record establishes that the applicant's spouse would suffer emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The AAO previously determined that the record was sufficient to determine that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to the United Kingdom.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this 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. Accordingly, the prior AAO decision is affirmed.

ORDER: The motion is granted and the prior AAO decision dismissing the appeal is affirmed.