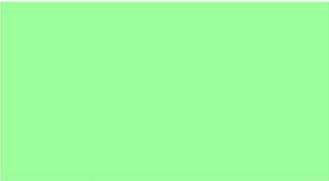


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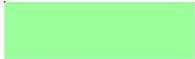


U.S. Citizenship  
and Immigration  
Services



Date: FEB 27 2013

Office: ATHENS

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:

SELF-REPRESENTED

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, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Egypt 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. On February 25, 2010, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility pursuant to 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 and U.S. citizen daughter.

In a decision dated November 25, 2011, the field office director found the applicant inadmissible for having been convicted of the offense of providing false statements in an immigration document under 18 U.S.C. § 1546(a). The field office director concluded that the applicant had established that his inadmissibility would cause extreme hardship to the applicant's spouse upon her relocation to Egypt. However, the field office director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative in the event of separation from the applicant and denied the waiver application accordingly.

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

The record includes, but is not limited to: the applicant's statement on appeal; statements by the applicant's spouse; medical documentation concerning the applicant's wife's hearing condition; divorce decrees; a copy of the applicant's marriage certificate; birth certificates; documentation concerning the applicant's criminal history; and documentation concerning the applicant's administrative removal proceeding.

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, or
  - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating

to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), 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 the applicant was convicted on May 6, 2003, in the United States District Court for the Northern District of California of making false statements in an immigration document in violation of 18 U.S.C. § 1546(a). The maximum possible penalty for this offense is imprisonment for 25 years. However, the applicant was sentenced to two months custody within the Bureau of Prisons. The field office director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the 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 notes that section 212(h) of the Act provides that a waiver of inadmissibility is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's U.S. citizen spouse and the applicant's U.S. citizen daughter. Under the statute, hardship to the applicant himself is not relevant and will be considered only if it results in hardship to a qualifying relative. 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.

In his decision dated November 25, 2011, the field office director found the applicant had established extreme hardship to his spouse in the context of relocation to Egypt. In support of a finding of extreme hardship, the applicant provided evidence describing the difficulties his spouse experienced in Egypt since she relocated to that country in 2007. The record reflects that the applicant's spouse resided in Texas and Oklahoma most of her life. The record further reflects that the applicant's spouse's health has been adversely affected due to air and water pollution in Egypt. The applicant's spouse states that she experienced depression and feelings of isolation as a result of separation from her children and grandchildren, all of whom reside in the United States. The record reflects that the field office director noted in the decision that the applicant's spouse referenced her concern about anti-American and anti-Christian sentiment in Egypt, and also noted her lack of Arabic language ability. The applicant's wife documented her inability to find employment in Egypt during the three-year period she resided there with the applicant, her initiative in working as an English language tutor, and the low pay she received for her services. Based on the foregoing, the field office director noted that the applicant's inadmissibility caused his spouse extreme hardship in Egypt. In light of the individual hardship factors viewed in the aggregate, the AAO agrees with the field office director's finding that the record demonstrates the applicant's spouse experienced extreme hardship upon relocation to Egypt as a result of the applicant's inadmissibility to the United States.

The asserted hardship factors in this case are the medical, emotional and financial impact to the applicant's wife if she remains in the United States without him. In support of a finding of extreme hardship upon separation from the applicant, the applicant's wife provided two undated statements. In her undated three-page statement, the applicant's spouse asserts that she currently experiences medical, financial, and emotional difficulties as a result of separation from her husband. With regard to medical difficulties, the applicant's spouse asserts that she developed a condition that puts her at risk of losing her sense of hearing. The applicant's spouse states that she has been unable to receive an appropriate diagnosis because she does not have medical insurance and cannot afford the testing costs. The applicant's wife further states that she was diagnosed with a herniated lower lumbar disk and scoliosis; conditions which currently affect her health and for which she has been unable to receive treatment given her lack of medical insurance. In her one-page undated statement submitted on appeal, the applicant's wife indicates that her medical reports and documentation corroborating her conditions "will be submitted within 30 days [of filing the appeal] until [she] hires the right attorney." However, other than her undated statements, the record contains no documentary evidence corroborating her medical conditions, diagnoses, and the treatment she receives, if any. The AAO notes the applicant's assertions regarding the existence of medical conditions. Additionally, it notes the record does include a one-page "Hearing Tests" form with two charts reflecting the results of an audiogram. Notwithstanding, the patient's name in the form is illegible and the form does not include the conclusions and recommendations rendered by the treating

physician. 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)).

With regard to financial hardship upon separation, the applicant's wife asserts that "she needs her husband back [in the United States] to work and help [her] in the day to day life issues." Other than a generalized assertion regarding job prospects for the applicant were he to be admitted into the United States, the applicant's wife does not detail her financial hardship. The record does not contain evidence regarding the financial support she received from the applicant prior to his voluntary departure to Egypt, if any. Moreover, the record reflects that the applicant is currently employed in the United States; yet, no financial documentation has been submitted to demonstrate the inadequacy of her earnings or the difficulties she encounters in having to provide for her household without the financial support and assistance from the applicant. That is, the record does not contain evidence documenting how the applicant's inadmissibility is affecting the finances of his qualifying relatives. Additionally, the record does not include pay stubs, copies of income tax returns, or other financial documentation for the AAO to evaluate the extent of the applicant's wife's asserted financial hardships.

The AAO notes that the statements by the applicant's wife confirm that the applicant has a close relationship with his spouse and children. Additionally, they also corroborate the applicant's wife's assertion regarding her concern over the applicant's heart condition. However, hardship to the applicant is considered only insofar as it results in extreme hardship to the applicant's qualifying relatives. Here, the record evidence does not demonstrate how the applicant's condition raises his wife's hardships to a level considered extreme. Finally, the AAO notes that other than a generalized assertion regarding emotional hardship to the applicant's U.S. citizen daughter resulting from separation from the applicant, the record does not include any documentary evidence demonstrating extreme hardship to her. Accordingly, when considering the emotional and financial hardships collectively, the AAO finds that the applicant has not fully demonstrated that the hardship his wife and children will experience as a result of separation is more than the common result of inadmissibility or removal.

The AAO 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. 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. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994), *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 relatives in this case.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

(b)(6).

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