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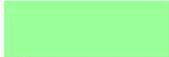


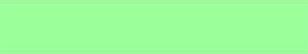
U.S. Citizenship  
and Immigration  
Services



DATE: **FEB 28 2013**

Office: BANGKOK, THAILAND

FILE: 

IN RE: 

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 its 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-290B, 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 any 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Bangkok, Thailand 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 China 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 committed a crime involving moral turpitude. The applicant is the son of a U.S. citizen. He 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.

The Field Office Director concluded that the record did not establish that the bar to the applicant's admission would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated August 26, 2011.

On appeal, the applicant contends that his mother is suffering hardship without his care as she is now 65 years old and alone in the United States. *Form I-290B, Notice of Appeal or Motion*, dated September 21, 2011.

The record includes, but is not limited to, statements from the applicant and his mother; a statement from a social worker at the [redacted] of Hong Kong; medical documentation relating to the applicant's mother and documentation of the applicant's criminal history. The entire record was reviewed and all relevant information considered in reaching a decision on the appeal.

Section 212(a)(2)(A) of the Act states 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 record reflects that the applicant was convicted of burglary, Section 11 of Chapter 210 (S.11 Cap.210) Hong Kong Ordinances, on December 16, 1998 and was sentenced to an unknown length of imprisonment in a Hong Kong detention center. On July 17, 2001, the applicant was convicted of assisting in operating a gambling establishment, Section 5 of Chapter 148 (S.5 Cap.148) Hong Kong Ordinances. He was sentenced to two months of imprisonment, which was suspended for 12 months and fined \$5,000. On June 10, 2004, the applicant was convicted of exposing for sale infringing copies of copyright works for the purpose of trade or business without the license of the copyright owner, Section 118 of Chapter 528 (S.118 Cap. 528) Hong Kong Ordinances, and was placed on probation for 18 months.

As the applicant has not disputed his inadmissibility on appeal, and the record does not show that the Field Office Director erred in determining that the two offenses are crimes involving moral

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turpitude, the AAO will not disturb her finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

A waiver of a section 212(a)(2)(A)(i)(I) inadmissibility is found in section 212(h) of the Act, which states in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), . . . of subsection (a)(2) . . . if –

(1)(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 . . .

A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relative in this proceeding is the applicant's U.S. citizen mother. Accordingly, hardship to the applicant will be considered only insofar as it results in hardship to his mother. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable 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 BIA 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 BIA 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 BIA 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 BIA 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.

On appeal, the applicant states that the emotional hardship of missing someone is beyond description, particularly in the case of his mother who has no immediate relatives in the United States and is completely on her own. He states her emotional pain comes from her expectation that he was going to be able to care for her and that she does not want to seek treatment for her pain because “she knows if [he] can reunite with her, the symptom[s] will disappear.” The applicant states that his mother has suffered enough in the past and now deserves to enjoy the time she has left and that it is his obligation to make this happen. He also indicates that she was recently diagnosed with kidney stones and requires surgery.

In a March 1, 2011 statement, the applicant’s mother asserts that following the death of the applicant’s father, she had to work hard to support her family and that as a result of overwork, she, within the last ten years, has developed illnesses such as high cholesterol, high blood pressure and angina pectoris. She also states that, in 2010, she was diagnosed with kidney stones, cholecystitis, gallbladder polyps and a fatty liver, and that she must fight these illnesses every day and cannot stop the treatments and medication. However, her physical pain, the applicant’s mother contends, is dwarfed by the mental pain she is suffering as a result of her separation from the applicant, who is

her only son. She states that she has no relatives in the United States, as her second husband died in 2006.

In a letter dated September 21, 2011, [REDACTED] a social worker at the [REDACTED] of Hong Kong, states that she met the applicant when he was in secondary school and that at that time he showed "great care" for his mother. She reports that she has had no formal contact with the applicant since February 1999.

To demonstrate the health problems with which his mother is struggling, the applicant has submitted a range of medical documents, including August 12, 2011 discharge instructions from the [REDACTED], which indicate her admission for undiagnosed chest pain; an August 25, 2011 medical reconciliation form and medications lists that establish she has been prescribed Amlodipine Besylate, aspirin, Calcium Phosphate, Isoniazid, Pyrodoxine, Lipitor, Nitrostat, Calvite and Robafen; a bone density report from Dr. [REDACTED], dated July 8, 2011, indicating she suffers from osteopenia; radiology reports from the Radiology Department, [REDACTED] dated June 24, June 29, and July 20, 2011, which report that she has "prominent lumbar spine degenerative disease;" August 25, 2011 pathology and procedure reports from the [REDACTED], which establish that she had a colonoscopy performed on August 25, 2011, during which a "diminutive polyp" was removed; and a radiology report, dated February 5, 2010, from [REDACTED] that indicates she has two small benign gallbladder polyps, a fatty infiltration of the liver and an 8 millimeter "hyperechoic focus," which appears to be a kidney stone.

While the AAO acknowledges that the record establishes that the applicant's mother has a number of health problems for which she is being treated, the submitted documentation does not demonstrate the severity of these conditions, establish that they limit her activities or prove that she is in need of any type of assistance. Moreover, the applicant indicates on appeal that his mother is employed in the United States and that she supports herself on the income she earns. Accordingly, we do not find the record to demonstrate that the applicant's mother requires his assistance to deal with her health problems or to meet her responsibilities, including her financial obligations. We also note that the record offers no documentary evidence, e.g., a psychological evaluation or other medical report, which would establish the emotional impact of separation on the applicant's mother. Although we note that she is experiencing emotional hardship as a result of separation, the record fails to demonstrate the nature or extent of that hardship. Therefore, based on the record before us, the AAO finds insufficient evidence to establish that the applicant's mother would suffer extreme hardship if the waiver application is denied.

With regard to the hardship that his mother would experience as a result of relocation, the applicant states that she spent considerable time in Hong Kong prior to her 2003 immigration to the United States and that she does not want to settle down in Hong Kong under Chinese sovereignty. He notes that his mother's experiences under the Cultural Revolution, during which she saw her parents harassed and mentally tortured, deter her from returning to Hong Kong for good. The applicant also asserts that his mother is receiving "top class" treatment in the United States for her many health problems and that it is unrealistic and unfair to ask her to give up this treatment to return to Hong Kong, where she would have to be retested before proper medications could be prescribed. He

maintains that his mother is receiving more effective medical treatment in the United States and that she should not be asked to risk her life by starting new medical treatment in a place in which she does not feel secure.

The applicant further contends that his mother, who is employed in the United States, would find no job opportunities in Hong Kong because of her age. Becoming financially dependent on him, he states, would make his mother unhappy because she would feel financially "incapable." The applicant also asserts that his mother would have a better retirement package in the United States than in Hong Kong. He states that, in Hong Kong, she would not be eligible for any retirement plan other than a senior citizen's allowance, which would not be sufficient to meet the cost of living.

While the applicant contends that his mother does not want to return to Hong Kong because of her experiences during the Chinese Cultural Revolution, he has submitted no documentation to establish the emotional or mental health impacts that a return to Hong Kong would have on his mother. The AAO also notes that the record contains no country conditions materials to demonstrate that a return to Hong Kong would place his mother's life at medical risk or would otherwise negatively affect her health. Neither is there any documentation that indicates the applicant's mother could not obtain employment in Hong Kong should she wish to do so or that her income from a senior citizen's allowance would provide her with insufficient income. Moreover, although the applicant indicates that his mother would wish to be financially independent, the record also fails to demonstrate that he would be unable to provide his mother with whatever financial assistance she might require in Hong Kong. Therefore, the applicant has not established that a return to Hong Kong would result in extreme hardship for his mother.

As the record does not establish that a qualifying relative would experience extreme hardship as a result of the applicant's inadmissibility pursuant to section 212(a)(2)(A)(i)(I) of the Act, he is not eligible for a waiver under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served by considering whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility 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, appeal will be dismissed.

**ORDER:** The appeal is dismissed.