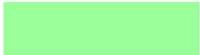


(b)(6)



U.S. Citizenship  
and Immigration  
Services



Date: **FEB 28 2013** Office: BANGKOK 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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Vietnam 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. 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 her U.S. lawful permanent resident (LPR) spouse. On November 16, 2010, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601).

In a decision dated August 4, 2011, the field office director found the applicant inadmissible for having been convicted of a crime involving moral turpitude. The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly.

On appeal, the applicant asserts that the emotional and psychological difficulties her husband is experiencing demonstrate extreme hardship to her qualifying relative. She acknowledges that her LPR husband is allowed to reside with her in Hong Kong, but that his personal preference is to remain in the United States. The applicant asserts that, because her husband has lived in the United States for over six years, it will be impossible for him to integrate into Hong Kong society.

In support of the application, the record includes, but is not limited to: the applicant's two appeal letters; a change of address letter; a letter by the applicant's husband; the applicant's Form DS-230; and documentation concerning the applicant's criminal history.

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:

(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

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....

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 shows that the applicant was convicted in the [REDACTED] on May 1, 2000, of theft in violation of section 9 of the Laws of Hong Kong, Theft Ordinance, Chapter 210. In Hong Kong, the offense of theft carries a maximum possible penalty of 10 years in jail. However, the record reflects that the applicant was sentenced to one day in jail for this offense. The district director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. As the applicant has not disputed inadmissibility from this conviction on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the district 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 relative that qualifies is the applicant's spouse. 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.

The asserted hardship factors in this case are the medical, psychological and emotional impact to the applicant's U.S. LPR spouse if he remains in the United States without the applicant. The applicant's spouse stated in a declaration dated October 14, 2010, that he is emotionally attached to the applicant and his daughters, and that "his health is deteriorating and [he] hopes to have the care

from [his] wife and daughters.” He further stated that he would suffer emotionally if the applicant is denied admission because she works for 14 hours a day and she has injured her hands at her work. The applicant’s spouse asserted that he misses his family and that he thinks of them and their lives in Hong Kong daily. The applicant’s spouse further noted that the applicant is an honest person and that her conviction “is a misunderstanding.” In her letter dated March 15, 2011, the applicant indicated that her husband is experiencing financial difficulties because his income is unstable due to his occupation as a manual worker. The applicant stated that she is younger and can work longer hours if allowed to be reunited with her husband in the United States. The applicant asserted that her children could have a better development in the United States than in Hong Kong.

At the outset, the AAO notes that it is a well-established principle of immigration law that adjudicators cannot entertain collateral attacks on a judgment of conviction unless that judgment is void on its face, and cannot go behind the judicial record of conviction to relitigate the applicant’s guilt or innocence. *See Matter of Madrigal*, 21 I&N Dec. 323, 327 (BIA 1996); *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974).

Additionally, the AAO notes that the declaration by the applicant’s spouse, as well as her own declaration, supports her assertion that she now has a stable, loving relationship with her husband. However, when considering the emotional, medical and financial hardships collectively, the AAO finds that the applicant has not fully demonstrated that the hardship her husband will experience if she is denied admission is more than the common result of inadmissibility. Though the applicant’s husband noted that he has medical problems, the record does not contain medical reports or other evidence corroborating this assertion. In fact, the applicant’s husband failed to list his medical conditions, and the applicant did not indicate the level of medical care and attention he currently needs. Moreover, the record does not contain any evidence indicating that the applicant’s husband depends on another person for medical care. 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)). Similarly, the documentation submitted regarding the applicant’s husband’s emotional hardship does not establish that his emotional hardship is extreme. Rather, the evidence indicates that the applicant’s qualifying relative faces no greater hardship than the unfortunate, but common difficulties arising whenever a spouse is denied admission. The Board has long held that the common or typical results of inadmissibility do not constitute extreme hardship, and has listed separation from family members and emotional difficulties as factors considered common rather than extreme. *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).

Moreover, though the applicant’s spouse asserts financial difficulties resulting from separation, the record does not include evidence detailing expenses related to his household or to the care of his asserted medical conditions. Though the applicant’s spouse states that he has rented an “expensive house” so his family can live comfortably when they immigrate to the United States, the applicant has failed to submit documentation regarding the cost of rent, or evidence demonstrating the inadequacy of the applicant’s spouse’s earnings in providing for the household. Additionally,

though the applicant stated on appeal that her husband is experiencing financial difficulties resulting from her inadmissibility to the United States, she has failed to submit documents evidencing how her inadmissibility is affecting her husband's finances.

Accordingly, when considering the asserted emotional, medical, and financial hardships collectively, the AAO finds that the applicant has not fully demonstrated that the hardship her husband will experience as a result of separation is more than the common result of inadmissibility or removal.

In regard to joining the applicant to live in Hong Kong, the asserted hardship factors to the applicant's husband are difficulty in obtaining residency in that country and difficulties in adapting a life in Hong Kong. Here, the current documentation submitted is insufficient to establish that the applicant's husband will encounter difficulties in obtaining residency in Hong Kong. The only document included in the record supporting this assertion is a letter by the applicant. The letter fails to establish that the applicant would be unable to join his family in that country, particularly when considering that the applicant's husband entered Hong Kong in 1989 as a refugee, was granted permanent residence there, lived in that country for almost 15 years, and his wife and daughters lawfully reside in that country.

The additional documentation submitted does not support the asserted claims of hardships in regards to relocation. The record also lacks adequate documentation to support these claims. For instance, the record does not include documentation from trusted country conditions sources to support the applicant's claims made pertaining to country conditions in Hong Kong including discrimination against Vietnamese and individuals who have resided in the United States, or difficulties with the application procedures to procure residency in Hong Kong. Also, the record does not support the applicant's assertion that her husband would be unable to find employment in Hong Kong. Even were the AAO to take notice of general conditions in Hong Kong, the applicant has not demonstrated the extent to which certain conditions would affect him or his family members specifically.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 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.