



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 02 2013** Office: NEWARK

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic who entered the United States on June 17, 1998. The applicant departed the United States on June 28, 2001, based on a grant of advance parole. He was paroled into the United States on July 18, 2001. Upon adjudication of the application for adjustment of status, the field office director found the applicant to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of his last departure. The applicant was further 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 been convicted of crimes involving moral turpitude. The applicant is married to a U.S. citizen. The applicant filed an application for a waiver of inadmissibility in conjunction with his application for adjustment of status in order to remain in the United States with his U.S. citizen spouse and children.

In a decision dated March 29, 2011, the field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly.

On appeal, counsel for the applicant contends that the field office director abused his discretion and that her decision should be vacated. Counsel asserts that the evidence outlining disabilities and financial and medical difficulties demonstrates extreme hardship to the applicant's qualifying relatives.

The record includes, but is not limited to: a statement by the applicant's wife; school records; psychological evaluations; country conditions documentation; birth certificates of the applicant's children and stepchildren; medical records; pay stubs and income tax returns; and documentation regarding 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)(9)(B) of the Act provides:

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

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(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (Board) held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. In accordance with the BIA's decision in *Matter of Arrabally*, the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 . . . is inadmissible

The 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 on March 13, 2003, the applicant was convicted in the New Jersey Superior Court, Morris County, of: theft by deception in the third degree in violation of section 2C:20-4 of the New Jersey Statutes; false identification in the third degree in violation of section 2C:21-17 of the New Jersey Statutes; and "conspiracy/fraudulent use of a credit card" in the third degree in violation of section 2C:5-2 of the New Jersey Statutes. In New Jersey, a crime of the third degree is punishable by a term of imprisonment between three and five years. *See* N.J. Stat. Ann. § 2C:43-6.

The record reflects that the applicant was sentenced to 90 days in jail, probation for a period of three years, restitution to Citigroup in the amount of \$2,879, and 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 does not dispute inadmissibility from these convictions on appeal, 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 [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 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). In this case, the applicant asserts that denial of his admission will impose extreme hardship upon his U.S. citizen wife 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 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 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.

With regard to joining the applicant to live in the Dominican Republic, counsel states that the inaccessibility of healthcare and employment in that country “make it extremely detrimental to the family as a whole to relocate to the Dominican Republic.” The record contains a U.S. Department of State, Country Report on Human Rights Practices – 2009: Dominican Republic (March 11, 2010), and the World Health Organization Country Cooperation Strategy Report – 2009: Dominican Republic. The AAO acknowledges the relevancy of such documentation in describing general conditions in the Dominican Republic. However, counsel for the applicant has failed to indicate the specific country conditions supporting his assertions pertaining to healthcare issues and employment opportunities. Regarding the asserted inaccessibility of public healthcare, the record is insufficient to establish that access to medical care in the Dominican Republic would be insufficient to treat the applicant’s qualifying relatives’ conditions were they to require specialized treatment. The World Health Organization report addresses public health expenditures and infant and maternal mortality rates; it does not address access to healthcare, sufficiency of services, or treatment and care of the family’s medical conditions, such as communication impairment, asthma, or allergy to penicillin. Additionally, there is no evidence in the record indicating that the applicant’s spouse will be unable

to find employment in the Dominican Republic. Accordingly, counsel has not demonstrated, and the record does not otherwise reflect, the specific extent to which certain conditions would affect the applicant or his family or how that would lead to a finding of extreme hardship.

With regard to remaining in the United States without the applicant, the applicant's wife states in a declaration dated February 18, 2009, that her husband is involved in taking care of their children. She asserts that the applicant is an essential part of their family and that he is careful and patient with their children. The applicant's wife further asserts that the applicant is involved in the daily lives of their children, as he routinely takes them to school, doctor's appointments and sports practice. The AAO notes that family separation must be considered in determining hardship. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) the Ninth Circuit discussed the effect of emotional hardship on the alien and her husband and children as a result of family separation. Similarly, the Third Circuit in *Bastidas v. INS*, 609 F.2d 101 (3rd Cir.1979) explicitly stressed the importance to be given the factor of separation of parent and child. It is acknowledged that the applicant's wife and children will experience emotional difficulties if they remain in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's wife, and as demonstrated by the evidence in the record in the form of statements and letters, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F. 2d 465, 468 (9th Cir. 1991).

The applicant's spouse states that the applicant suffered a work-related accident in September 2003 and is currently receiving disability benefits. Documentary evidence in the record shows that the applicant receives bi-weekly compensation in the amount of \$733.00. Counsel for the applicant states that the applicant's wife was unemployed at the time the appeal was filed. He contends that the applicant's wife depends completely on her husband for financial support. Evidence in the record indicates that the applicant was receiving, at the time the appeal was filed, \$482 a week in unemployment benefits. Counsel contends that the applicant's wife's unemployment compensation is inadequate to support her household should the applicant be denied admission into the United States. However, other than income tax returns reflecting the incomes of both the applicant and his wife, the record does not contain documentary evidence in support of the asserted financial hardships. That is, the record does not contain utility bills, lease agreements, or other financial documentation which would lead the AAO to determine that the combined incomes of the applicant and his spouse, as reflected in the submitted income tax returns, were sufficient to maintain their household and cover their monthly obligations. Similarly, the AAO notes there is insufficient evidence in the record to show that without the applicant's financial support, the applicant's wife and children would experience financial hardships. No evidence detailing expenses related to the household or to the care of the applicant's family has been submitted. 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 regard to medical hardships, the applicant's wife indicates that one of the applicant's daughters from a prior marriage, [REDACTED] has been diagnosed with hearing disorders. She states that the applicant accompanied her to medical procedures and monitors her emotions to ensure she is in good mental health. The record contains a psychological reevaluation report, dated May 19, 2008. The report indicates that [REDACTED] was diagnosed with communication impairment and was being reevaluated to assess her conditions. The report indicates that [REDACTED] is a good worker, attentive listener, and that her most recent grades indicate she demonstrates grade-level proficiency in most courses taught in school. The applicant's spouse asserts that [REDACTED] suffers depression; yet, the report indicates that "projective data and clinical interview suggest no emotional disturbances at the time of this assessment. [REDACTED] appears to be an outgoing person who enjoys interpersonal contact."

The applicant's wife indicates that her daughter (the applicant's stepdaughter), [REDACTED], is enrolled in a special education program. Evidence in the record corroborates this assertion and an individualized education program report reflects that she was diagnosed with a communication impairment. The report reflects that enrollment in the specialized education program has helped [REDACTED] as she demonstrates positive peer and teacher relationships and her attention and concentration and organizational skills were noted to show much improvement. Lastly, the record includes a psychological evaluation by the Children's Specialized Hospital, which reflects that the applicant's son, [REDACTED] has been diagnosed with attention deficit hyperactivity disorder (ADHD). However, neither counsel, the applicant, nor his wife have asserted how this diagnosis will affect the applicant's son in a way which, when considered with the other asserted hardship factors in the aggregate, would lead to a finding of extreme hardship.

Counsel states that the applicant's stepdaughter, [REDACTED] was involved in a car accident on April 29, 2010, and that she is continuing to recover from this accident with the support of the applicant and his wife. There is documentary evidence in the record corroborating this assertion. A medical report dated January 21, 2011, prepared by the University of Orthopedic Associates, LLC, reflects that [REDACTED] was diagnosed with Lumbar Plexopathy and other ailments; yet, there is no evidence as to her impediments, disability, or need of constant care, if any. Moreover, there is no documentation provided detailing how the applicant cares for or assists her, and to what degree.

Based on the foregoing, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish that the applicant's qualifying relatives would experience emotional, financial, and medical hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and they remained in the United States.

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.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. See section 291

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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.