



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 07 2013

Office: MOSCOW, RUSSIA

FILE: [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)

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 law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 Moscow, Russia. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application will remain denied.

The applicant is a native and citizen of Estonia 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 committed 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 remain in the United States with his U.S. citizen spouse.

In a decision, dated May 26, 2009, the field office director found that the applicant was inadmissible based on a conviction for "covert or concealed theft" under section 139(2)(3) of the Criminal Code of Estonia. She then found that the applicant had failed to establish that his bar to admission would impose extreme hardship on his qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated June 22, 2009, the applicant stated that he and his wife would like to have children, that his wife is not able to sign a permanent contract with her employer, and that he has not been able to find employment in Estonia. He stated that these factors are causing a lot of stress for him and his wife. He stated further that his wife cannot join him in Estonia because she cannot speak or understand Russian or Estonian, which would be necessary in her field as a nurse. He stated that she would not be able to find employment in Estonia and feels that it is extreme hardship to not be able to start their family.

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.

The record indicated that the applicant was convicted of, "covert and concealed theft" under article 139(2)(3) of the Criminal Code of Estonia on or about November 10, 1997. The record also indicated that on April 12, 1999, the applicant was convicted of "theft, destruction, breaking or hiding of a document, seal, or stamp" under article 185(2) of the Criminal Code of Estonia and on May 2, 2002, the applicant was convicted of "driving a motor vehicle while intoxicated" under article 96(1) of the Code of Administrative Offenses of Estonia.

In our decision, dated January 20, 2012, we found that the applicant's conviction for driving while intoxicated was not a crime involving moral turpitude, but that his convictions for theft were crimes involving moral turpitude because the record did not establish that the theft involved a temporary taking. See *Matter of Lopez-Meza*, 22 I. & N. Dec. 1188 (BIA 1999), *Matter of Torres-Varela*, 23 I. & N. Dec. 78 (BIA 2001). (DUI with two or more prior DUI convictions is not a CIMT). See *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974)(stating, "It is well settled that theft or

larceny, whether grand or petty, has always been held to involve moral turpitude . . ."); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966)(stating, "Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude]"), and *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). We note that the applicant did not dispute his inadmissibility on appeal and does not dispute his inadmissibility on motion. Thus, the applicant remains inadmissible under section 212(a)(2)(A)(i)(I) as a consequence of his two theft convictions.

The applicant is eligible to apply for a waiver of this inadmissibility under section 212(h) of the Act.

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

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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-Moralez*, 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 record of hardship included only the statements on the applicant’s Form I-290B, dated June 22, 2009. We found that as the applicant had not submitted any additional evidence to substantiate his undetailed assertions regarding extreme hardship to his spouse, we could not find that the applicant’s spouse would suffer extreme hardship as a result of his inadmissibility. 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)).

On motion, the applicant states that his spouse currently works as a registered nurse and lives with her sister and parents in California. He states that he is working as a scaffolder in Finland and would like to start a family and raise their children in the United States. He states further that his spouse cannot relocate to Estonia because she cannot speak Estonian or Russian and would not be able to continue in her profession as a nurse. He states that she loves her profession and he does not want her to feel isolated and depressed. The applicant also submits a letter from his spouse, his spouse’s employer, his spouse’s sister, and his spouse’s parents in support of his motion. The record indicates that the applicant’s spouse works fulltime as a nurse and earns \$48.88 per hour. The applicant’s

spouse asserts that relocating will be an extreme hardship for her because of her family ties to the United States; she will have to leave her employment in the United States and will not be able to find employment in Estonia; and she suffers from asthma and worries about the lack of adequate medical care in Estonia. The applicant's spouse states further that she is suffering from being separated from the applicant because they want to start a family. Again, the AAO finds that the applicant has not shown that his wife would suffer extreme hardship as a result of his inadmissibility. The record fails to include supporting documentation regarding the country conditions in Estonia or the applicant's spouse's medical condition. Moreover, the record does not establish that the hardships the applicant's spouse is and would experience as a result of her husband's inadmissibility rise above and beyond what would be expected upon the separation of a husband and wife.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(h) 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 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion is granted and the underlying application remains denied.

ORDER: The application is denied.