



**U.S. Citizenship
and Immigration
Services**

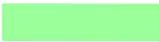
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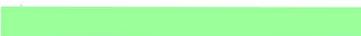
JAN 14 2013

DATE:

Office: ROME (LONDON)

File: 

IN RE:

Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act (the 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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy, 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 United Kingdom 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 been convicted of a crime involving moral turpitude. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) submitted by his wife, a U.S. Citizen. He does not contest this finding of inadmissibility, but rather is seeking a waiver of inadmissibility in order to immigrate to the United States to live with his wife.

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of District Director*, February 29, 2012.

On appeal, former counsel¹ for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's wife is suffering, and will continue to suffer, as a result of her husband's inadmissibility. In support of the appeal, counsel submits a brief referring to documentation previously provided, including, but not limited to: hardship statements and character references; copies of passports, birth, and marriage certificates; medical records and information; a psychological evaluation; and a police certificate and conviction record. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states 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 . . . is inadmissible.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

.....

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in

¹ The record reflects that the applicant consented to counsel's withdrawal as attorney of record due to closing of her practice after she submitted this appeal.

excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

On June 30, 2009, the applicant was convicted in the Crown Court at Exeter, United Kingdom of three counts of Theft by Employee and was sentenced to 12 months imprisonment. The director found that the crime of which the applicant was convicted was a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) 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)(1)(B) 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 U.S. citizen 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-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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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;

the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The record reflects that the applicant married the qualifying relative on February 12, 2010. Although the applicant's wife had moved to England to marry and live with the applicant, she returned to the United States following the death of her maternal grandfather in July 2011. She traveled back to England, but moved back to the United States in January 2012. Regarding physical and emotional hardship caused by separation from the applicant, the applicant's wife reports feeling

burdened by concerns about her husband, mother, and remaining three grandparents. Claiming that her husband has Type I (insulin-dependent) diabetes, she claims to be worried about his health. Regarding financial hardship caused by separation, the record contains the qualifying relative's statement that her worsening depression ended a successful career as a marketing executive and that, since returning to the United States in January 2012, she has become unemployed. She claims to have lost her health insurance and to be maintaining her medication regimen only with the applicant's help. There is no substantiation of her past income, her current expenses, her husband's expenses, or his ability to support his wife, although a job letter establishes the applicant's current salary in British pounds. 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)).

Documentation on record, when considered in its totality, does not show that the applicant's wife is suffering extreme hardship due to separation from the applicant. The AAO recognizes that his wife will endure hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal or inadmissibility and, moreover, the record reflects that the applicant's wife was aware of her husband's June 2009 criminal conviction when they married in February 2010. For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's wife is experiencing due to her husband's inadmissibility does not rise to the level of extreme. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative from separation as required under the Act.

The qualifying relative contends that she would experience hardship by relocating abroad to reside with the applicant. A psychiatric evaluation conducted while she resided in England diagnosed the applicant's wife with major depression and anxiety, based on symptoms including vomiting; panic attacks; gastrointestinal distress and diarrhea; palpitations and shortness of breath; insomnia; fatigue, headaches, and lack of energy. See *Psychiatric Evaluation*, May 17, 2011. The psychiatric report also notes that depression-related stress caused her to suffer painful outbreaks of shingles in England and that, on orders from her treating physician there, she was taking several prescription antidepressants, as well as antianxiety and antidiarrheal medications. Due to these medical issues, notes the psychiatrist, the applicant and his wife decided she should return to the United States to help care for her ailing relatives to alleviate her guilt at being unavailable to help out. The qualifying relative claims that she alone of her parents' five children is interested in developing a relationship with their estranged mother and has the time to devote to the grandparents. Based on the applicant's wife's statement and other supportive statements, counsel reports that the qualifying relative's brother is disabled by epilepsy, while her sisters are married with children and/or live too far from their mother and grandparents to offer assistance. There is no indication the applicant's wife has medical training, and the record suggests that her assistance consisted of providing transportation, companionship, and help around the house. There is no evidence of the frequency with which she helped out or how her mother and grandparents managed when she was overseas. The AAO further notes that the applicant's spouse has two sisters who live in the same town as her grandparents, and aside from a general statement from one sister that she is too busy to provide assistance to her grandparents, the record contains no further explanation or evidence indicating that

other family members would be unable to provide the care and assistance the applicant's spouse is currently providing to her grandparents.

Regarding ties to the United States, there is evidence that a difficult childhood caused her to develop a strong bond to her grandparents, whom she left England to help care for. Although the record reflects that the applicant's wife developed psychological and related physical problems when she moved to England, the evidence shows that, while there, she was receiving care and treatment and also had the emotional support of her husband. There is no indication that she ever sought work, earned income, or had difficulty adapting to life overseas. The record reflects that she even traveled back and forth several times to help her U.S. relatives with their affairs while maintaining the marital household with the applicant in England.

The documentation, when considered in its totality, reflects that the applicant has not established his wife will suffer extreme hardship by moving abroad to live with him. There is no indication in the record, nor does she claim, that she was unaware of the health problems of her mother and grandparents when she chose to leave the United States to pursue married life with the applicant. The AAO recognizes that the applicant's spouse will be inconvenienced by her choice to leave behind family members with whom she shares a bond of affection. Although the death of one of her grandparents appears to have caused the applicant's wife to rethink her decision, her situation if she relocates overseas is typical of individuals who move abroad as a result of inadmissibility and does not rise to the level of extreme hardship based on the record. Based on the evidence provided, the applicant has not met his burden of establishing a qualifying relative would suffer hardship beyond the common results of removal or inadmissibility if he is unable to immigrate.

In proceedings for application for waiver of grounds of inadmissibility, 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 and, accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.