



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

(b)(6)

Date: **JAN 24 2013**

Office: KENDALL FILE: [REDACTED]

IN RE:

Applicant: [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:

[REDACTED]

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Kendall Field Office Director, Miami, Florida. 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 remains denied.

The record establishes that the applicant is a native and citizen of Chile who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having violated a law related to a controlled substance. 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.

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 Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 14, 2009.

On appeal the AAO determined that the applicant had not shown his U.S. citizen spouse would suffer extreme hardship if she were to relocate abroad to reside with the applicant or if she were to remain in the United States while the applicant resided abroad due to his inadmissibility. The appeal was dismissed. *Decision of the AAO*, dated December 14, 2011.

On motion counsel for the applicant submits a brief, an affidavit from the applicant's spouse and brother, a copy of the permanent resident card of the spouse's mother, and a copy of the birth certificate of the spouse's brother showing he was born in the United States. The record also contains financial documents submitted with the previous applications. The entire record was reviewed and considered in rendering this decision.

The record establishes that the applicant has a conviction of for possession of under 20 grams of cannabis under Florida Statutes § 893.13(6)(B). The applicant is thus inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having violated a law related to a controlled substance. The applicant is eligible to file a waiver under section 212(h) as his conviction was for a single offense related to simple possession of 30 grams or less of marijuana.

Section 212(a)(2)(A)(i)(II) 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-
 - (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance ... is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) ... of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana...

A waiver of inadmissibility under section 212(h) of the Act is dependent of a showing that the bar on 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-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.

As noted the AAO determined that extreme hardship had not been established should the applicant’s spouse relocate to Chile to reside with the applicant or if the applicant’s spouse were to remain in the United States while the applicant resided abroad due to his inadmissibility. As the AAO noted,

Counsel states that the applicant’s spouse was born and raised in the United States; her entire family resides in Miami....and she has limited employment prospects in Chile. The record does not include supporting documentary evidence of the family members and their legal status or of the employment situation in Chile. Although the applicant’s spouse may experience difficulty in Chile, the record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality establish that she would experience extreme hardship upon relocation to Chile. The applicant’s spouse states that she has known the applicant since high school; she depends on the applicant emotionally and financially.... The record does not include additional documentary evidence of emotional hardship to the applicant’s spouse. The record does not include sufficient evidence to establish the degree of financial hardship that the applicant’s spouse may experience.

On motion counsel contends the entire family of the applicant's spouse resides in United States and she is close to her lawful resident mother, often caring for her brother as her mother works two jobs. Counsel notes that the applicant had stated she did not have a close relationship with her mother, but that was incorrect as she is not close to her father. Counsel contends the spouse also has close relations with her sister and other relatives. Counsel contends the applicant's spouse has limited Spanish skills and would face cultural shock and isolation with language, culture, economic and emotional difficulties that would cause an impediment to finding employment if forced to go with the applicant to Chile. Counsel states that Chile is geographically far from Miami, making it difficult for the applicant's spouse to see her family if she were residing there due to the high cost of air fare to Chile. Counsel asserts the applicant's spouse relies on the applicant to help support their household so she would face economic hardship without him. Counsel also contends the applicant's spouse relies on the applicant for spiritual and emotional support and that the spouse has developed insomnia, difficulty eating, and chronic headaches because of high stress and anxiety.

In her affidavit the applicant's spouse states that the applicant helps support her and her brother emotionally and financially. The spouse states that she is not fluent in Spanish making it nearly impossible to get employment in Chile, which would decrease her standard of living and make her feel isolated and estranged far from family in the United States, where she was born. She states that she has never been to Chile and knows no one there. She states that if the applicant is denied residency in the United States she would be forced to live without him or to leave behind her brother, whom she watches while her mother works. The spouse states that stress is affecting her health, causing insomnia and difficulty eating, and has led to chronic headaches for which she is going to see a psychologist. She states that as she and the applicant work hard to make ends meet she would not know how to survive without him. In a previously-submitted statement she noted that the applicant is the only person she can depend only financially and emotionally, that she does not have any other family ties, as she and her parents do not maintain a close relationship, and that she does not have family members in the United State whom she can count on.

The record does not support a finding that the applicant's spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant. Counsel and the applicant's spouse contend the spouse would experience culture shock, be isolated from her family in the United States, and with limited Spanish be unable to find employment in Chile. Counsel and the applicant's spouse contend the spouse is close to her family in the United States and would suffer emotionally being separated from them, but in her initial statement the spouse contended she had only the applicant for emotional support as she had no one else to depend on and was not close to her parents. On motion counsel contends the applicant's spouse is close to her mother as well as other family members. The applicant's spouse asserts that she would feel estranged from her family in the United States, but only mentions that she watches her brother while her mother works. On motion counsel submitted a copy of the alien resident card for the spouse's mother and birth certificate for spouse's brother, but no other evidence to support the claimed closeness to her family, with whom she previously stated she was not close. Other than her mother and brother the applicant's spouse referenced no other family members. Further, no documentation

has been submitted indicating economic or other conditions in Chile generally or particularly where the applicant would reside in order for the AAO to determine whether the applicant's spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant.

The record also does not establish the applicant's spouse would experience extreme hardship if she remained in the United States while the applicant resided in Chile due to his inadmissibility. Counsel and the applicant's spouse contend the spouse is emotionally and spiritually dependent on the applicant, but the record contains no supporting evidence concerning the emotional hardship the applicant's spouse states she would experience due to long-term separation from the applicant or how such emotional hardships are outside the ordinary consequences of removal. Counsel and the spouse state she is experiencing health problems because of stress, but provided no detail or documentation in support of this assertion. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

Counsel and the applicant's spouse contend she would suffer financial hardship without the applicant's economic contributions. The record contains previously submitted financial documentation for the spouse in support of the applicant's Form I-485, *Application to Adjust Status*, but no documentation has been submitted establishing the spouse's current income, expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship. Further, no documentation has been submitted establishing the applicant's income or contribution to the spouse's financial situation.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."). Alternatively, it has not been established that the applicant's spouse would be unable to travel to Chile on a regular basis to visit him.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

(b)(6)

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. Accordingly, the motion to reopen is granted and the prior decision of the AAO is affirmed. The waiver application is denied.

ORDER: The motion to reopen is granted, and the prior decisions affirmed. The waiver application is denied.