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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: JUL 0 3 2013 Office: BALTIMORE, MD

FILE:
CONSOLIDATED

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:

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion. The motion will be granted, and the application will be approved.

The applicant is a native and citizen of the United Kingdom 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's spouse and child are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The District Director concluded that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 25, 2008.

The AAO affirmed, finding the applicant did not demonstrate that his U.S. Citizen spouse would experience extreme hardship given his inadmissibility, and consequently dismissed the appeal. *See AAO Decision,* December 22, 2011.

On motion, the AAO found that, although the applicant demonstrated his spouse would experience extreme hardship in the event of separation, he failed to establish that she would suffer such hardship upon relocation to the United Kingdom. *See AAO Decision on Motion,* March 26, 2013.

On this second motion, counsel submits a brief in support, a statement from the applicant, and documentation on employment and immigration to the United Kingdom. In the brief, counsel explains that the applicant did not in fact work in the United Kingdom after he was convicted, and that he would not be able to find employment there. Counsel adds that the spouse would not be able to immigrate to the United Kingdom for financial reasons.

The record includes, but is not limited to, the documents listed above, the applicant's statement, the applicant's spouse's statement, psychological evaluations, medical and financial records, letters of support, a birth certificate, and a medical letter for the applicant's son. The entire record was reviewed and considered in arriving at a decision on the motion.

The record reflects that the applicant was convicted on April 29, 2004 of conspiracy to defraud and was sentenced to 30 months imprisonment by the . Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that "Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct." 341 U.S. 223, 232 (1951). Inadmissibility is not contested on this second motion. As such, the AAO again affirms that the applicant committed a crime involving moral turpitude and is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A) of the Act states 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-
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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 –
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> . . . .
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> (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 and child are the only qualifying relatives 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.

The AAO previously found that his spouse would experience extreme hardship upon separation from the applicant. There is nothing in the record indicating this finding should be disturbed. The AAO therefore affirms that the applicant has demonstrated his spouse would experience extreme hardship upon separation.

Counsel contends that, contrary to the information on the applicant's Form G325A, Biographic Information, he was not employed after he was convicted. The applicant explains that the listed employers were temporary staffing agencies, and that while he was serving his sentence, he

informed the agencies he was temporarily unavailable for work, although he did not mention the reason. The applicant adds that after he told the agencies he was available for work, he received no assignments from either agency. Counsel claims that, given the rising unemployment rate in the United Kingdom, it would be even more difficult for the applicant to find sufficient employment in the United Kingdom now. Information on both agencies is submitted in support, as is an article on the unemployment rate in the United Kingdom. The applicant concludes that British law will not let his spouse and children come to the United Kingdom because of the difficulty he will face finding adequate employment. Counsel asserts that this requirement is similar to that of an Affidavit of Support in United States immigration law.

The applicant has submitted sufficient evidence demonstrating his spouse would experience financial and immigration related difficulties upon relocation to the United Kingdom. The letter from the employment expert in the United Kingdom indicates the applicant would have difficulties obtaining employment due to his criminal record. Furthermore, the applicant has established he did not in fact work in the United Kingdom after his conviction. The record also shows the applicant's spouse, given her specific background and skills, may have a difficult time finding adequate employment in the United Kingdom. The applicant has moreover established that the couple's demonstrated inability to find sufficient employment in the United Kingdom will cause immigration related difficulties as well as financial hardship. Evidence of record indicates legally relocating to the United Kingdom will require the spouse to show adequate financial resources and / or employment, which the applicant has shown will be problematic given their financial and employment situation.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the financial, immigration related, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to the United Kingdom.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The negative factors include the applicant's 2004 conviction, as well as the period of time spent in the United States without lawful status. The positive factors include the extreme hardship to the qualifying relative, some evidence of hardship to the applicant's son, and the period of time which has passed since his conviction.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden. The motion is granted, and the underlying application is approved.

ORDER: The motion is granted and the underlying application is approved.