



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 19 2013 OFFICE: PHILADELPHIA

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


f.
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, Pennsylvania, denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the underlying application will remain denied.

The applicant is a native and citizen of the Bahamas 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 and stepchild.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated January 5, 2009. On appeal, the AAO also determined that the applicant failed to establish extreme hardship to a qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated July 12, 2011.

The applicant has submitted a motion to reopen or reconsider the dismissal of his appeal. The AAO will grant the applicant's motion to reopen. On the applicant's motion, counsel for the applicant asserts that the applicant has submitted new documentary evidence to establish extreme hardship to his spouse.

In support of the applicant's motion to reopen and reconsider, the applicant submitted identity documents, financial documentation, psychological and medical documentation concerning the applicant's spouse, background information concerning the Bahamas, letters of support, and criminal documentation concerning the applicant's stepson.

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.

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 –
 - (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status.

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 applicant does not dispute the AAO's prior inadmissibility finding, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based upon his conviction of two crimes involving moral turpitude. The AAO previously determined that the applicant had been convicted of two crimes involving moral turpitude, including a retail theft conviction on January 14, 2003 and a theft by unlawful taking on August 9, 2004. Based upon this determination, the AAO concluded that it need not address the applicant's two other criminal convictions, including resisting arrest and tampering with or fabricating physical evidence.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse and stepchild. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

The record reflects that the applicant is a 50-year-old native and citizen of the Bahamas. The applicant's spouse is a 48-year-old native and citizen of the United States. The record is unclear

concerning the applicant's stepson, who currently resides with the applicant and the applicant's spouse. The record indicates that the applicant's stepson was 17 years of age on January 27, 2009, so that he would be at least 21 years of age today. The applicant is residing with his spouse and stepson in Charlotte, North Carolina.

Counsel for the applicant asserts that the applicant's spouse is on disability, so that she relies upon the applicant's income to cover their monthly expenses. The record contains a letter from the applicant's spouse's life insurance company indicating that she is currently receiving disability benefits and a letter indicating that the applicant's spouse has filed a disability claim with the U.S. Social Security Administration. The applicant submitted bills indicating past due payments on electricity, cable, and medical bills. The applicant also submitted a letter indicating that his spouse receives monthly disability benefits in the amount of \$1,341.18. The applicant's spouse submitted an itemized list of household bills, but it is noted that the amounts listed are not necessarily supported by the evidence in the record. Specifically, the applicant's spouse states that their apartment rental costs \$860 a month, but a lease agreement indicates a monthly rent of \$814. Similarly, the applicant's spouse states that she owes \$3,200 in federal taxes, but the most recent submitted tax return indicates a payment due of \$939. Further, amongst other unsupported valuations, including \$1,000 a year for oil changes for two vehicles, the applicant's spouse also contends that she owes \$10,000 in doctors' bills.

The most recent tax return submitted by the applicant is a joint return from 2009, indicating an adjusted gross income of \$46,022. The applicant's spouse was not receiving disability benefits at that time and there is no updated tax return in the record. There are no W-2 forms available for the applicant and his spouse, but a 2007 individual tax return for the applicant's spouse indicates an adjusted gross income of \$41,309. There is no information concerning the amount the applicant contributes to the household. Further, the applicant's stepson, at least 21 years of age, resides with the applicant and the applicant's spouse. The applicant's stepson submitted a letter stating that he relies upon the applicant and the applicant's spouse for financial support. There is no information concerning the extent to which the applicant's stepson provides financial support to the household and the record does not contain any tax records indicating that the applicant's stepson is being claimed as a dependent. 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)).

The applicant's spouse asserts that it would cause tremendous hardship to her marriage if she were separated from the applicant. The record contains a psychological evaluation stating that the applicant's spouse tends to suffer from low-level chronic depression with more significant levels when she is feeling particularly stressed. The psychological evaluation also states that the applicant's spouse used to experience feelings of panic, for which she was placed on Lexapro for approximately a month. The applicant's spouse was diagnosed with major depressive disorder, recurrent. The psychological evaluation does not contain any recommendations for further visits or treatments for the applicant's spouse. It is noted that the evaluation took place on a single date,

January 27, 2009, and the record does not contain any updated information concerning the applicant's spouse's psychological state.

The applicant's stepson submitted a letter stating that he resides with the applicant and the applicant's spouse and relies upon both of them for financial and emotional support. As noted, the record does not contain any information concerning the applicant's stepson's employment, including tax returns or W-2 forms reflecting his financial status. The record contains a psychological evaluation of the applicant's stepson stating that the applicant's stepson has a close relationship with the applicant and demonstrates behaviors consistent with mild attention deficit disorder, for which he could use familial support, including a father figure. It is noted that the psychological evaluation does not present any diagnoses for the applicant's stepson.

It is acknowledged that separation from a spouse or stepparent often creates hardship for both parties and the evidence indicates that the applicant's spouse and stepson would suffer emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse and stepson would suffer extreme hardship upon separation from the applicant.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to the Bahamas to reside with the applicant because she would be leaving behind family ties in the United States. Counsel contends that the applicant's spouse provides support to three of her children in the United States. The applicant's spouse currently resides in the United States with one of her sons and the record contains a letter submitted by that son asserting that the applicant's spouse provides him with emotional and financial support. The record contains documentation concerning the applicant's spouse's other son, an inmate locator search indicating that her son is incarcerated in [REDACTED]. Counsel for the applicant contends that the applicant's spouse currently travels to visit her incarcerated son.

The applicant's spouse also asserts that she has been assisting her daughter in caring for an autistic son. The applicant's spouse's daughter submitted a letter stating that her mother has been vital in helping her raise her children, one born with autism and a seizure disorder. The record contains a medical report containing impressions of the applicant's spouse's grandson, including seizure disorder, intellectual disability, and autism. The applicant's spouse's daughter contends that she specifically moved her family to Charlotte, North Carolina so that her son could be close to his grandparents. Further, it is noted that the psychological evaluation of the applicant's spouse states that the applicant's spouse cares for her disabled mother in the United States.

It is also noted that the applicant's spouse is a native of the United States, currently receiving insurance disability benefits, and has a pending application for Social Security disability benefits. Counsel asserts that the applicant's spouse would lose her existing disability benefits upon relocation to the Bahamas.

The applicant's stepson does not make any assertions concerning any hardship he would experience if he relocated to the Bahamas with the applicant. It is noted that the applicant's stepson is a citizen of the United States.

In this case, the record contains sufficient evidence to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to the Bahamas. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative 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 balancing positive and negative factors to determine whether the applicant merits this 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 application will remain denied.

ORDER: The motion is granted, the prior decision of the AAO is affirmed, and the underlying application remains denied.