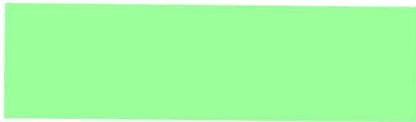


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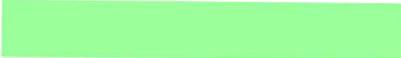
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **JUL 22 2013** Office: KENDALL FILE: 

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 (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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kendall, Florida. An appeal of the denial was rejected by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of Chile who was found to be inadmissible to the United States pursuant to 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 been convicted of a crime involving a controlled substance. The applicant is married to a United States citizen. On August 17, 2009, he filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). 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 wife.

In a decision dated September 2, 2009, the field office director found the applicant inadmissible for having been convicted of the offense of possession of marijuana. The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Form I-601 waiver application accordingly. On September 29, 2009, the applicant filed a Notice of Appeal or Motion (Form I-290B) and a brief in support of his appeal of the September 2, 2009 denial.

In a decision dated February 21, 2012, the AAO rejected the applicant's appeal after noting that in part 2 of the Form I-290B, the applicant indicated that the appeal related to his Form I-485 application. As the AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment of status application, the appeal was rejected.

On motion, counsel for the applicant asserts that the original appeal was related to the denial of the applicant's Form I-601 waiver application and that, since the Kendall Field Office did not issue a receipt number for the waiver application, her office referenced the Form I-485 receipt number posted on the September 2, 2009 Field Office denial letter. Counsel contends that the legal arguments in the brief filed with the September 2009 appeal referenced the denial of the waiver application. Counsel submits new documentary evidence on motion which she contends establish medical hardships to the applicant's U.S. citizen wife.

The record includes, but is not limited to: counsel's brief; medical documentation; documentation regarding the reliability of articles on Wikipedia.org; copies of prescription records; a sworn statement by the applicant's wife; the applicant's sworn statement; family photos; a letter by the secretary of the [REDACTED] character reference letters; country conditions documentation; employment reference letters; copies of income tax reports; bank statements; utility bills; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been considered in rendering a decision on the appeal.

The regulation at 8 C.F.R. § 103.5(a) governs motions and states, in pertinent part:

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. . . .

. . .

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

As the applicant's motion states new facts and is supported by documentary evidence, the AAO will grant his motion to reopen and reconsider.

Section 212(a)(2)(A) of the Act provides, 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 –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
 - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

The record shows that on December 5, 2002, the applicant was convicted in the [redacted] of possession of marijuana in violation of Florida Statutes § 893.13. Documentary evidence in the record demonstrates that the applicant was guilty of a controlled substance violation involving 20 grams or less of marijuana. Based upon this conviction, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) for having been convicted of a crime relating to a controlled substance. The applicant does not dispute his inadmissibility on appeal.

As the applicant's conviction relates to simple possession of not more than 30 grams of marijuana, he is eligible for a waiver of inadmissibility under section 212(h)(1)(B) 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

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's U.S. citizen wife. Under the statute, hardship to the applicant himself is not relevant and will be considered only if it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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 of Immigration Appeals (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.

With regards to relocation and joining the applicant to live in Chile, the asserted hardship factors to the applicant's wife are the financial and medical hardship, and adverse country conditions in that country. In an affidavit dated August 20, 2009, the applicant's wife states that she was diagnosed with asthma and bronchitis when she was a child and received many years of treatment. However, the applicant's wife indicates that the situation is now under control after years of treatment. She also asserts that due to a fall in 2004, she's had to endure lower back pain and that this pain has led to depression and part-time employment. The record includes a letter by [REDACTED] in which he indicates that the applicant's wife is under his care for depression and anxiety. He indicates that the applicant's wife needs the emotional support of her husband to better function and the security of a stable relationship. However, [REDACTED] does not indicate in his statement any tests he performed to conclude that the applicant's wife is experiencing depression and anxiety, the methodology he used to reach his findings, or the extent of his observations of the applicant.

On motion, counsel points to copies of prescriptions in support of her assertion that the applicant's wife is undergoing pharmacological treatment to combat depression. However, the AAO notes that the two prescription copies are dated 2006 and 2008, and there is no evidence suggesting that she is still being prescribed antidepressants. In fact, a medical report prepared by [REDACTED] on August 11, 2009 reflects that the applicant's wife is "not taking any med[ication] for anxiety."

Regarding the applicant's claims of financial hardship, the record includes an employment verification letter dated July 20, 2009. In the letter, [REDACTED] Director of Finance at the [REDACTED] asserts that the applicant's wife is employed on a part-time basis as an administrative clerk. Earnings statements indicate that from February 16, 2009 to June 30, 2009, the applicant earned \$2,685.90. The record also includes copy of their jointly filed 2004 income tax return, which indicates that their income for that year was \$15,007. Though we note the submitted utility bills, we note that the record does not include more recent tax returns or other financial evidence indicating the applicant's earnings and the amount of his financial contributions to their household. The 2004 income tax return is outdated and does not provide sufficient detail of the applicant's current finances for the AAO to conclude that his qualifying relative relies on his

financial support. The record does not contain other documentary evidence demonstrating that the applicant's wife relies on her husband for financial assistance. 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)). Without this financial documentation, the AAO is unable to conclude that the applicant's wife would experience financial hardship without the applicant's continued income and financial contributions to the household.

The applicant's wife asserts that the applicant takes care of her, tends to her needs and is in charge of the household chores. She indicates that the applicant is supportive, a good husband, and helps her during her pain episodes. Here, the AAO acknowledges that the applicant's wife will experience emotional difficulties if she remain in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the applicant's wife's above-described emotional hardships, as demonstrated by the evidence in the record in the form of statements and letters, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F. 2d 465, 468 (9th Cir. 1991).

The applicant's wife claims that she will endure extreme medical hardship upon relocation to Chile due to noted health concerns in that country. The applicant's wife indicates that the air pollution in that country would be a source of concern and notes that some medical facilities in "remote areas" may not meet U.S. standards. Counsel submitted country conditions documentation and newspaper articles in support of these claims. However, we note that several of these articles are in the Spanish language. As these submissions were not accompanied by certified English language translations, they will not be considered by the AAO. *See* 8 C.F.R. § 103.2(b)(3). Additionally, the submitted country conditions documents in the record regarding deficiencies in some of Chile's medical facilities are outdated in that they date back to 2006 and 2008. Although we acknowledge the relevancy of such documentation in describing conditions in Chile at the time they were prepared, we find that the submitted documentation is outdated in that it fails to reflect the medical environment in Chile as of the date of the motion to reopen and reconsider.

Therefore, when considered in the aggregate, the documentation in the record fails to establish the existence of extreme hardship to the applicant's U.S. citizen wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior AAO decision will be affirmed.

ORDER: The prior AAO decision is affirmed.