

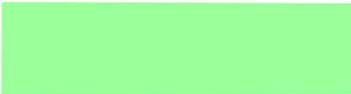
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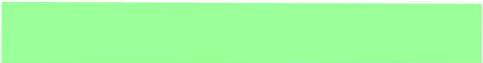


U.S. Citizenship
and Immigration
Services



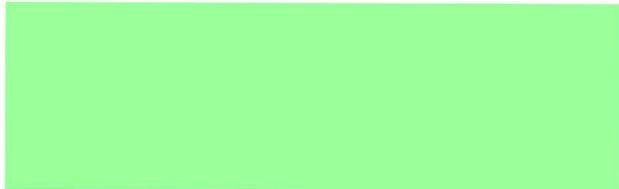
DATE **JUN 04 2013** OFFICE: LONDON



IN RE: 

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.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long, sweeping underline.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, London, England and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of India and citizen of England who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of 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 in order to remain in the United States with his U.S. citizen spouse and children.

The District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and that the applicant does not merit a favorable exercise of discretion and denied the application accordingly. *See Decision of the District Director*, dated June 28, 2012.

On appeal, counsel for the applicant asserts that the applicant's spouse and children are suffering extreme hardship upon separation from the applicant and would suffer extreme hardship if they relocated to join him in England. Specifically, counsel contends that the applicant's qualifying relatives are suffering emotional, physical, and financial hardship due to separation from the applicant. Counsel further contends that the applicant's spouse would be legally required to leave her daughter behind in the United States, as well as her parents who need her in their lives, if she relocated to England.

In support of the waiver application and appeal, the applicant submitted a letter, letters from his spouse and stepchild, letters of support, identity documents, family photographs, financial documentation, criminal records concerning the applicant, letters from the applicant's stepchild's school, a letter from the applicant's spouse's former employer, legal documents, psychological and medical documentation, background information concerning pension funds and digestive diseases, and a letter from the applicant's child's daycare. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years

before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

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

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." 24 I&N Dec. at 697 (citing

Duenas-Alvarez, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703. Finally, in all such inquiries, the burden is on the alien to establish “clearly and beyond doubt” that he is “not inadmissible.” *Id.* at 709 (citing *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008))

The record reflects that the applicant was convicted on February 22, 2008 in United States District Court, Southern District of Texas, of aiding and abetting in wire fraud, pursuant to 18 U.S.C. § 1343 and 2. The applicant was sentenced to 37 months imprisonment and ordered to pay restitution in the amount of \$7,352, 626. The District Director found the applicant to be inadmissible to the United States for having been convicted of a crime involving moral turpitude. The applicant does not dispute this ground of inadmissibility on appeal, and the AAO finds sufficient support for this finding in the record. It is noted that crimes that require the intent to defraud have been held, as a general rule, to involve moral turpitude. *Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992).

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

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, son, and stepdaughter are 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*, 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 applicant is a 49-year-old native of India and citizen of England. The applicant’s spouse is a 44-year-old native and citizen of the United States. The applicant is currently residing in England and his qualifying relative spouse and children are residing in Houston, Texas.

The applicant’s spouse asserts that she is suffering extreme emotional hardship due to separation from the applicant. The record contains a letter from the applicant’s spouse’s physician stating that she is suffering from major depressive disorder and generalized anxiety disorder and that she is currently taking psychotropic medication. The applicant’s spouse also contends that she is very depressed because of the stress of separation from the applicant, constant travel, and her finances. The record contains a letter from a physician stating that the applicant’s spouse was being treated for chronic fatigue. The applicant’s spouse contends that her chronic fatigue is aggravated by the stress of single parenting and that she has relied upon her brother’s help, but cannot rely on him very often because he lived in Corpus Christi. However, the applicant’s spouse’s mother’s recent letter states that the applicant’s spouse’s brother is currently residing with the applicant’s spouse, so that his assistance would no longer be limited by distance. The record also contains a medical letter stating that the applicant’s spouse’s daytime sleepiness and anxiety are related to her hectic schedule and frequent travel. It is noted that the record indicates that the applicant’s spouse is no longer travelling overseas and she has not done so since September 2011, has not been employed since June 2011, and that her son is currently in daycare.

The applicant's spouse contends that she married the applicant on July 23, 2010 and that she fears that their relationship will fail if she does not visit him regularly. The applicant's spouse asserts that she was visiting the applicant every month until she was unable to travel because she is suffering from cervical neuritis. The record contains a letter from the applicant's spouse's chiropractor stating that she is being treated for cervical neuritis and lumbar facet syndrome and that when she has flare-ups, it can make it difficult for her to travel overseas. There is no indication that the applicant's spouse has not been able to stay in contact with the applicant through other means or that she would be unable to travel overseas when she is not experiencing a flare-up in her condition. It is noted that the applicant's spouse states that she was diagnosed with cervical neuritis in 2003 and the record indicates that the applicant's spouse has traveled to England numerous times since that date.

The applicant's spouse asserts that she is suffering from financial hardship due to separation from the applicant because of the need to maintain two households, one in Houston and the other in England. The applicant's spouse contends that due to her constant travel to England, she was unable to maintain a full-time job, was unemployed since June 2011, and was collecting unemployment benefits. The applicant's spouse submitted a list of her estimated annual bills and asserts that they are not covered by her unemployment benefits.

The applicant's spouse asserts that her savings account is depleted, her checking account was overdrawn, and that she only has \$8,000 in another account. The applicant's spouse also contends that the applicant does not have a monthly income despite his position as a managing director, their investments in a property project, and management of a pension fund. As such, the applicant's spouse contends that the applicant was unable to meet his financial obligations because his consulting income did not cover his bills.

The applicant's spouse submitted evidence of her unemployment benefits, bills, and accounts. The applicant also submitted an accounting of his bills in England. It is noted that the applicant's spouse has been employed in the financial sector, including two senior financial analyst positions, since 1999 until 2011. The applicant's spouse asserts that she was unable to obtain employment due to her monthly travel to visit the applicant, but the record indicates that she has not traveled to England since September 2011. The applicant's spouse states that based upon her experience and education, she has an earning potential between \$85,000 and \$120,000. There is no explanation as to why the applicant's spouse is currently unable to obtain any employment in the United States, as she is no longer travelling regularly overseas. It is also noted that the record does not contain updated tax records for the applicant to support their assertions concerning their family's current income. Further, the applicant's spouse's brother who is residing with the applicant's spouse states that he has a full-time position and there is no information concerning the extent to which he is contributing to the household. 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 her adopted son needs the applicant in his life because he suffers from special circumstances, as he was born premature and to a mother who was addicted to drugs. The applicant's spouse asserts that they do not know the extent of his birth circumstances on his development or growth, but that he has a higher risk of developmental and health issues in his life. The record contains a letter from the applicant's adopted son's pediatrician stating that the applicant's son is at risk for learning and behavioral problems. It is noted that the record indicates that the applicant's adopted son required methadone weaning after his birth and that a gastroesophageal reflux disease led to an acute life-threatening episode, so that he now takes Zantac. However, it is noted, as stated by the applicant's spouse, that the developmental and health issues concerning their son are speculative. As such, there is no information in the record concerning any necessary treatment for the applicant's son that would require the presence of the applicant. Absent an explanation in plain language from the treating physician of the exact nature and severity of any current condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning this issue.

The applicant's spouse contends her daughter has been very affected by her mother's frequent travel to England, so that she became extremely stressed, which affected her grades. The record contains a letter from the applicant's spouse's daughter's school stating that her daughter's grades declined from kindergarten to first grade. The applicant's spouse also contends that her daughter suffers from eczema of the skin, heartburn, and eczema of the gums, determined most likely to be from emotional and psychological stress. It is noted however, that the record contains a letter from a doctor of dental surgery contradicting the applicant's spouse's assertions, stating that there are no reports or information confirming the psychological nature of the applicant's daughter's periodontal issues. It is also noted that the applicant's spouse has asserted that she is no longer making the overseas trips that she contends are the cause of her daughter's stress. In the aggregate, the evidence is insufficient to find that the applicant's qualifying relatives are suffering extreme hardship beyond the common results of inadmissibility or removal upon separation from the applicant.

The applicant's spouse asserts that she cannot relocate to England to reside with the applicant because she cannot leave behind her significant family ties in the United States. The applicant's spouse contends that her daughter's biological father would not allow her to reside outside of the United States. The applicant submitted a legal advisory opinion from a family law attorney stating that, under Texas Law, a domicile restriction would normally be granted by the court when both parents play an active role in a child's life so that the applicant's spouse would be restricted from taking her daughter outside of their county and contiguous counties. The record contains a letter from the applicant's stepdaughter's school's counselor stating that the applicant's stepdaughter has a close relationship with her biological father and he regularly drives her to and from school. The school's counselor further states that the applicant's stepdaughter's biological father works together equally with the applicant's spouse to co-parent. The applicant's stepdaughter's teacher submitted a letter stating that the applicant's stepdaughter's biological father has taken a major role in her development and is in close contact with the school concerning her education. The applicant's stepdaughter's biological father also submitted a letter stating that he and the applicant's spouse effectively share custody of their child and that he would take legal action to prevent his daughter from relocating to England.

The applicant's spouse asserts that aside from her daughter, she would also leave behind parents who depend upon her if she relocated to England. The applicant's spouse contends that her father suffers from dementia and that she provides both emotional and financial support to her mother. The applicant's spouse's mother submitted a letter asserting that the applicant's spouse has provided her parents with emotional, physical, and financial support in their older years. The applicant's spouse's mother contends that after her son passed away, the applicant's spouse took care of her brother's service and burial arrangements. The applicant's spouse's mother also contends that the applicant's spouse is a support in their lives concerning the problems in their family, including paying for a large portion of her brother's legal expenses, taking him in, and also adopting the child of her drug-addicted sister. The applicant's spouse's mother asserts that the applicant's spouse also has paid for their property taxes for the last 15 years, provided household remodeling and furnishings, bought them a car, and paid for their travel. As noted, the applicant's spouse asserts that the applicant's spouse's daughter would be legally restricted from relocating to London. In support of the applicant's spouse's assertions, the record contains a legal advisory opinion from a family law attorney concerning Texas law and letters from the applicant's spouse's daughter's counselor, teacher, and biological father. As such, in the aggregate, the record contains sufficient evidence to find that the applicant's spouse and stepdaughter would suffer hardship beyond the common consequences of inadmissibility or removal if the applicant's spouse and stepdaughter relocated to England.

The record is insufficient to find that the applicant's son would suffer hardship beyond the common consequences of inadmissibility or removal if he relocated to England. It is noted that the applicant's son was born prematurely to a drug-addicted mother, but the medical record is speculative concerning the impact of his background upon his physical well-being and there is no indication that he would be unable to receive medical care, as necessary, upon relocation to England.

The applicant has demonstrated that his spouse and stepdaughter would suffer extreme hardship upon relocation to England. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relatives upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

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 upon 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 his U.S. citizen spouse and children 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 determining 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 appeal will be dismissed and the underlying application will remain denied.

ORDER: The appeal is dismissed.