



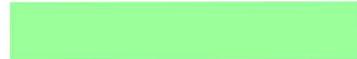
U.S. Citizenship  
and Immigration  
Services

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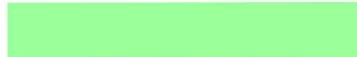


DATE: **JUN 24 2013**

Office: BANGKOK



IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Sections 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (i)

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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Bangkok, and an appeal was filed with the Administrative Appeals Office (AAO). The AAO dismissed the applicant's appeal in a decision dated May 16, 2011. The matter is now before the AAO on motion. The motion will be granted but the underlying waiver application remains denied.

The applicant is a native and citizen of Samoa who was found to be inadmissible under 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 been convicted of a crime involving moral turpitude. She seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen spouse and children.

The district director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, and denied the application accordingly. *See Decision of District Director*, dated February 12, 2008. The applicant appealed to the AAO, asserting that the district director erroneously applied the exceptional and extremely unusual hardship standard in assessing the applicant's waiver application, failed to consider the applicant's foreign pardon as a positive equity, and failed to consider all relevant factors.

In our decision on appeal, the AAO affirmed the director's finding that the applicant had been convicted of a crime involving moral turpitude. Additionally, we found the applicant to be inadmissible under section 212(a)(6)(C) of the Act for obtaining admission to the United States through fraud. We also found that the applicant's foreign pardon did not erase her conviction for immigration purposes. Finally, we found that the applicant had failed to demonstrate that a qualifying relative would experience extreme hardship if the waiver application were denied.

In the motion to reconsider, counsel for the applicant contends that the AAO erred in not considering two pieces of evidence regarding hardship the applicant's spouse will suffer if the waiver application is denied. Specifically, counsel notes that the applicant had submitted with her waiver application a psychological evaluation and a letter from a doctor, both of which demonstrate that the applicant's spouse would suffer hardship if forced to continue caring for his children on his own.

A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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 was reviewed and considered in rendering a decision on the motion.

The applicant has correctly noted that we failed to consider the psychological evaluation and doctor's letter in our previous decision despite the fact that the applicant submitted them with her appeal. Therefore, we will grant her motion to reconsider in order to evaluate the applicant's claim of hardship to her spouse in light of that evidence. Because the applicant has not contested our findings regarding her inadmissibility, we will only reconsider the matter of hardship. Section 212(h) states, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 . . . .

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver under section 212(h) is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. However, a waiver under section 212(i) cannot be based on extreme hardship to the applicant's children. Because the applicant requires a waiver under both sections, the AAO will determine the applicant's eligibility for a waiver under the more restrictive section 212(i). Therefore, the applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant's children will be considered only to the extent that it results in hardship to her spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 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 U.S. 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. INS*, 138 F.3d 1292, 1293 (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 applicant's spouse claims that separation from the applicant has been very difficult for him and his children. He explains that he and the applicant have four U.S. citizen children together:

Andrew, who was 22 when the applicant's spouse wrote his statement in 2008, [REDACTED] who was 20, [REDACTED] who was 19, and [REDACTED] who was 12. He notes that the applicant has been in [REDACTED] since 2000, so he has been raising the children on his own. He states that the separation has been particularly difficult for their youngest daughter, [REDACTED] who lived with the applicant in [REDACTED] from age three to age nine but then returned to the United States for a better education and to reunite with her siblings. The applicant's spouse indicates that he works long hours as the driver of a cement mixer, so he has limited time to spend with [REDACTED]. He asserts that [REDACTED] misses the applicant very much and cries for her almost every day. Additionally, he states that his separation from the applicant has caused him to suffer. *See Statement of [REDACTED]* dated April 3, 2008.

The record contains a psychological evaluation regarding the applicant's spouse and her youngest daughter, [REDACTED]. The evaluation states that [REDACTED] "showed a sad affect, a sense of loss and despair." *Psychological Evaluation, [REDACTED] Ph.D., MFT*, dated April 9, 2008. It further indicates that being separated from the applicant was contributing to [REDACTED] sadness and that she was "experiencing a high level of depression that can lead to acting out [b]ehavior if separation from [her] mother continues." *Id.* The evaluation also notes that the applicant's spouse has experienced sadness, hopelessness, difficulty concentrating, nightmares, and various other symptoms. Therefore, the evaluation diagnoses the applicant's spouse with Major Depression, Anxiety Disorder, and severe Post-traumatic Stress Disorder and notes that his symptoms could increase if his separation from the applicant continues. *Id.*

The record also contains a letter from the doctor of the applicant's eldest son, [REDACTED]. The letter indicates that [REDACTED] has been diagnosed with "thyrotoxic periodic paralysis from Graves' disease." *Letter from [REDACTED] M.D.*, dated January 5, 2011. The letter states that [REDACTED] symptoms have "temporarily resolved" but that he "is at risk for recurrence at any time" and that he "might benefit from some help at home" while undergoing treatment for Graves' disease. *Id.*

The AAO finds that the applicant's spouse will suffer extreme hardship if he continues to be separated from the applicant. The psychological evaluation demonstrates that the applicant's spouse is experiencing significant mental health problems in relation to his separation from the applicant, amounting to severe and ongoing depression, anxiety, and post-traumatic stress disorder. Additionally, the applicant's spouse has been responsible for raising his four children on his own while the applicant has been in [REDACTED]. The resulting hardship is exacerbated by [REDACTED] depression over her mother's absence and [REDACTED] serious medical issues. Therefore, the AAO finds that the applicant's spouse has experienced extreme hardship in the applicant's absence and that he will continue to do so if their separation continues.

However, the applicant has not claimed that her spouse would suffer extreme hardship if he were to relocate to Samoa with the applicant. 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 remain in the United States and thereby suffer extreme hardship as a consequence of

separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship to her spouse on relocation, 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 determining whether the applicant merits a waiver as a matter of discretion.

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, although we grant the motion, the appeal waiver application remains denied.

**ORDER:** The waiver application remains denied.