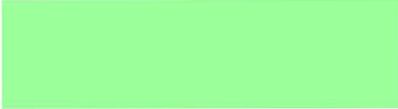




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE:

MAR 09 2013

OFFICE: MIAMI, FLORIDA

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 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 with the field office or service center that originally decided your case by filing a 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Miami (Oakland Park), Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica 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 been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, both dated August 6, 2011.

On appeal counsel asserts that the immigration officer “erred and applied a standard that is not consistent with the regulations.” *See Form I-290B, Notice of Appeal or Motion*, received August 31, 2011. Nowhere in the record does counsel specify the regulations to which he refers or any standard applied inconsistently thereto.

The record contains, but is not limited to: Form I-290B and counsel’s statement thereon; counsel’s “brief” in support of appeal; various immigration applications and petitions; a hardship statement; a psychologist’s affidavit; employment and income tax records; banking and billing statements; social security survivor’s insurance and related documents for the applicant’s son; biographical certificates and family photographs; and the applicant’s criminal record. The entire record was reviewed and considered in rendering this 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.)

The Eleventh Circuit Court of Appeals uses a traditional categorical and modified categorical framework approach to crimes involving moral turpitude. See *Fajardo v. Attorney General*, 659 F.3d 1301 (11th Cir. 2011). The Eleventh Circuit has applied the “realistic probability” test in other aggravated felony cases. See, e.g., *U.S. v. Rainer*, 616 F.3d 1212, 1214 (11th Cir. 2010). If a statute expressly punishes certain conduct, then the possibility that the statute will be applied to this conduct is not merely theoretical or the result of “legal imagination.” Rather, there is a “realistic probability” that the statute encompasses such conduct, regardless of whether a case exists in which the statute was actually applied to it. See *Accardo v. U.S. Atty Gen.*, 634 F.3d 1333, 1337 (11th Cir. 2011); *U.S. v. Jennings*, 515 F.3d 980 (9th Cir. 2008); *Mendieta-Robles v. Gonzales*, 226 Fed. Appx. 564 (6th Cir. 2007); *U.S. v. Vidal*, 504 F.3d 1072 (9th Cir. 2007); *U. S. v. Grisel*, 488 F.3d 844 (9th Cir. 2007); *U.S. v. Madera*, 521 F.Supp.2d 149 (D. Conn. 2007).

The record shows that on August 1, 2008 the applicant was convicted in Broward County, Florida for Grand Theft in the Third Degree (of property valued at between \$300 and \$5,000), in violation of Florida Statutes § Fl. 812.014(2)(C)(1), for her conduct on June 18, 2008. She was sentenced to 18 months of probation and monetary costs. The applicant does not contest whether her conviction under § Fl. 812.014(2)(C)(1) is for a crime involving moral turpitude and does not contest that she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO does not find these determinations to be in error, and the applicant requires a waiver under section 212(h) 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 –

....
(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) . . . 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 . . .; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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 or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's U.S. citizen spouse and son are qualifying relatives. 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's spouse is a 28-year-old native of Jamaica and citizen of the United States who has been married to the applicant since August 2009. While they have no children together, they jointly raise the applicant's 5-year-old U.S. citizen son, [REDACTED] from a prior relationship. The applicant's spouse states that [REDACTED] and the applicant are his life, they support him physically, emotionally and mentally and he cannot see himself without them. He expresses concern were they to reside in Jamaica where "crime is out of control." The field office director specifically noted in her denial that the record contains no corroborating documentary evidence addressing country conditions in Jamaica. Rather than addressing this deficiency on appeal, counsel asserts again that "crime is very high in Jamaica" but submits no corroborating evidence. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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)).

[REDACTED] contends on appeal that the applicant's spouse has a "medical history" which includes 3-4 migraine headaches a month for the previous four months and his blood pressure has gone up. No corroborating medical records have been submitted. [REDACTED] relays the history told her by the applicant's spouse, who reports he would miss his wife and stepson very much and feel very lonely and sad without them. [REDACTED] concludes that that the applicant's spouse "will suffer extreme hardship" if separated from the applicant and maintains that he "suffers from reactive depression to a feared deportation which would worsen if she were deported and moved away with his stepson." [REDACTED] indicates that she also interviewed [REDACTED] who referred to the applicant's spouse as his "daddy" and said that they play games together and his daddy takes him to the doctor when he is sick and the applicant is at work. [REDACTED] briefly describes two studies concerning children separated from their parents and lists the symptoms for "Diagnosis of Separation Anxiety Disorder." In concluding her affidavit, [REDACTED] writes that in her opinion, it would be in the best interest of [REDACTED] and "[REDACTED]" if the applicant "receives a waiver." While the AAO acknowledges [REDACTED] opinion and credentials, it notes that her affidavit is speculative in nature, recommends no treatment for any current symptoms, and is based on interviews with the subjects for the sole purpose of establishing "extreme hardship" for a "waiver." The AAO has considered [REDACTED] affidavit, in the aggregate, with all other assertions of hardship to the applicant's qualifying relatives.

While the applicant's spouse does not address financial hardship directly, [REDACTED] relays that he was the family's sole provider until the applicant began working in January 2011, and he reported that having two homes would not be affordable. Evidence in the record does not show that the applicant's spouse would be unable to provide some support to the applicant in Jamaica, that the applicant would be unable to find work in Jamaica with which she could support herself, and does not address whether close family members there might be willing to assist in her support. The AAO recognizes that a genuine and close familial bond is shared by the applicant's spouse, his stepson, and the applicant and that they will all experience varying degrees of difficulties related to separation. However, the evidence does not establish that the challenges described rise beyond those normally associated with separation due to a loved one's inadmissibility or removal.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse and son. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by either of the qualifying relatives, when considered cumulatively, meet the extreme hardship standard.

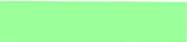
While the applicant's spouse does not directly address the possibility of relocating to Jamaica, [REDACTED] relays that he would be unable to do so because he would not have the economic opportunities in Jamaica that he has in the United States. The record contains no corroborating documentary evidence addressing Jamaica's economy or employment prospects. The applicant's spouse explains that if [REDACTED] was to relocate to Jamaica he would lose the insurance benefits he currently receives from "the state, WIC, Social Security, Health Insurance" as a result of his biological father's tragic death in 2009. While the record shows that the applicant's son currently receives some benefits related to his father's death, the evidence does not show which if any he would lose were he to relocate abroad or the impact this would have upon either qualifying relative. The applicant's spouse states that he has become the main father figure and influence in [REDACTED] life and it would be terrible for him to live in Jamaica without a father figure to guide him growing up. [REDACTED] relays that the applicant's spouse also worries about the educational and medical losses to his stepson in Jamaica. As noted in this decision and the field office director's, the record contains no country conditions reports of any kind concerning Jamaica. Noting that studies show that children separated from one or both parents risk psychological dangers, [REDACTED] speculates that [REDACTED] "will suffer extreme hardship if he lost the father he now has and in addition the educational and medical advantages his country offers him."

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's qualifying relatives. For the applicant's spouse, the AAO has considered his economic, employment and safety concerns about Jamaica as well as his current employment in the United States where he has resided for approximately eight years. For the applicant's son, the AAO has considered his stepfather's concerns, including those relayed by [REDACTED] including separation from the applicant's spouse in the event that he does not relocate, educational, medical, and safety-related concerns, and the loss of survivor-related benefits currently received as a result of his biological father's death. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse or son would suffer extreme hardship were they to relocate to Jamaica to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse and child face are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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 under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

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ORDER: The appeal is dismissed.