



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

(b)(6)

[Redacted]

Date: **MAR 14 2013** OFFICE: HIALEAH, FL

FILE: [Redacted]

IN RE: APPLICANT: [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:

SELF-REPRESENTED

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hialeah, Florida, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Trinidad and Tobago 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. The Field Office Director stated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative. *See Decision of Field Office Director*, dated November 30, 2009. The Application for Waiver of Grounds of Inadmissibility was accordingly denied. *Id.*

The AAO dismissed a subsequent appeal, finding that the applicant failed to demonstrate the existence of extreme hardship to the applicant's U.S. Citizen spouse. *See AAO Decision*, dated May 2, 2012.

On motion, the applicant claims her lawful permanent resident mother would experience extreme hardship upon separation from the applicant. The applicant's mother states that, due to her medical conditions, she would experience extreme hardship if the applicant was not present in the United States to take care of her. The mother moreover asserts that she suffers from anxiety at the thought of being separated from the applicant. In addition to the mother's statement, a letter from the mother's physician and medical records are submitted on motion.

The record includes, but is not limited to, the documents listed above, statements from the applicant and her spouse, medical and financial records, articles on country conditions in Trinidad and Tobago, evidence of birth, marriage, residence, and citizenship, other applications and petitions, documentation of criminal proceedings, and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

Section 212(a)(2)(A) of the Act states, in pertinent part:

- (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.

The record reflects that on April 27, 2006, the applicant was convicted of grand theft in Florida.

The Field Office Director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal or on motion, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the Field Office Director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is under section 212(h) of the Act. That section provides, 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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of 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 citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. If extreme hardship to the 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 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.

On appeal, the AAO found the applicant had failed to demonstrate that her U.S. Citizen spouse would experience extreme hardship given her inadmissibility. See *AAO Decision*, May 2, 2012. On motion, the applicant does not contest this finding, nor does the applicant submit additional evidence on hardship with respect to her spouse. Instead, the applicant contends her lawful permanent resident mother would suffer extreme hardship. As such, on motion the AAO’s finding on extreme hardship to the applicant’s spouse will not be disturbed, and the AAO will only evaluate whether the applicant’s mother would experience extreme hardship as required for a waiver under section 212(h) of the Act.

The applicant’s mother claims she would experience extreme hardship upon separation from the applicant not only because their emotional bond is strong, but because she suffers from severe hypertension and has injuries due to a fall in 2011. The mother states that the stress from the applicant’s immigration situation has elevated her blood pressure, and she does not know how she would cope mentally, emotionally, and physically without the applicant in her life. She adds that she has anxiety when she thinks about the situation. The mother’s physician indicates in a letter that she experienced a slip and fall accident in October 2011, and has been undergoing physical therapy three times a week for the last three and a half months. *Letter from [REDACTED] M.D.*, May 30, 2012. The physician adds that the mother is very dependent on the applicant, who takes care of her needs, and that the mother would benefit from having the applicant present to help her and assist her with her daily living activities. *Id.* Medical records are also submitted on motion. The mother further explains that she wears a back brace, is in constant pain, and depends on the applicant to take

care of her in the house and to take her to appointments and physical therapy. She additionally states that she is due to have surgery in the future, but does not know how she can without the applicant present.

The record demonstrates that the applicant's mother has some injuries, goes to physical therapy appointments, and that the applicant assists her mother. However, the record also reflects that the mother's brother, who is listed as a lawful permanent resident on the applicant's Form I-601 waiver, lives with the applicant, her spouse, and her mother in Miramar, Florida, and that the mother's son and daughter-in-law live on the same street in Miramar, Florida. *See I-601 Application for Waiver of Grounds of Inadmissibility*, dated October 26, 2009. There is no assertion or evidence on why none of these relatives could assist the applicant's mother in the event of separation from the applicant. Without such an explanation or supporting evidence, the AAO is unable to determine the hardship the applicant's mother will experience without the applicant present to assist her with her medical needs.

The applicant's mother indicates she is emotionally attached to the applicant, and that she suffers from anxiety when she thinks about a possible separation. While the AAO acknowledges that the applicant's parent would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the medical, emotional, or other impacts of separation on the applicant's parent are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Trinidad and Tobago without her parent.

The applicant has made no assertions or provided evidence to demonstrate that her mother, a native and citizen of Trinidad and Tobago, would experience extreme hardship upon relocation. The AAO therefore concludes the applicant has failed to establish that her mother would experience extreme hardship upon relocation to Trinidad and Tobago.

In this case, the record does not contain sufficient evidence to show that the hardships faced by a qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident parent 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 a 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, although the motion is granted, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.