



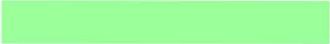
U.S. Citizenship
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Services

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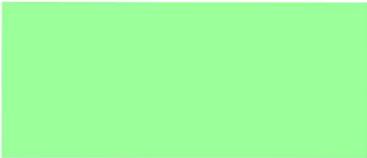
DATE: **MAR 22 2013** OFFICE: NEWARK

FILE: 

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey 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 under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with her U.S. citizen spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative, and denied the application accordingly. *See Decision of the Field Office Director*, dated June 20, 2011.

On appeal, the applicant submits further evidence to demonstrate extreme hardship to her qualifying relatives if her waiver of inadmissibility is denied.

In support of the waiver application and appeal, the applicant submitted identity documents, letters from the applicant, her spouse, and other family members, legal documents, criminal records, and financial documentation. 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 determining whether a crime involves moral turpitude, the Third Circuit Court of Appeals, per *Jean-Louis v. Holder*, 582 F.3d 462 (3d Cir. 2009), makes a categorical inquiry, which consists of looking “to the elements of the statutory offense . . . to ascertain that least culpable conduct hypothetically necessary to sustain a conviction under the statute.” *Id.* at 465-66. The “inquiry concludes when we determine whether the least culpable conduct sufficient to sustain conviction under the statute “fits” within the requirements of a CIMT.” *Id.* at 470.

However, if the “statute of conviction contains disjunctive elements, some of which are sufficient for conviction of [a CIMT] and other of which are not . . . [an adjudicator] examin[es] the record of conviction for the narrow purpose of determining the specific subpart under which the defendant was convicted.” *Id.* at 466. This is true “even where clear sectional divisions do not delineate the statutory variations.” *Id.* In so doing, an adjudicator may only look at the formal record of conviction. *Id.*

The record reflects that the applicant was convicted of shoplifting pursuant to section 2C:20-11B(2) of the New Jersey Criminal Code in Paramus Municipal Court on May 21, 2008. The applicant was also convicted of theft pursuant to section 2C: 20-2B(3) of the New Jersey Criminal Code in Wayne Municipal Court on February 21, 2008. The Field Office Director found the applicant to be inadmissible to the United States for having been convicted of crimes involving moral turpitude. The applicant has not disputed this determination on appeal. As the applicant has not disputed inadmissibility on appeal and the record does not show the field office director's finding of inadmissibility to be erroneous, the AAO will not disturb the field office director's inadmissibility finding.

Section 212(h) of the Act provides, in pertinent part, that:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

(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 section 212(h) waiver of the bar to admission resulting from 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 U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse and mother. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 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.

The record reflects that the applicant is a 26-year-old native and citizen of Jamaica. The applicant's spouse is a 30-year-old native of Jamaica and citizen of the United States. The applicant's mother is a 49-year-old native of Jamaica and lawful permanent resident of the United States. The applicant's child is a two year-old native and citizen of the United States. The applicant is currently residing with her spouse and child in Paterson, New Jersey.

The applicant's spouse asserts that the applicant has had a positive impact on his life and he cannot imagine living his life without her. The applicant's spouse acknowledges that the applicant has not been employed since the birth of their son on December 21, 2010, but states that they look forward to a future when the applicant could help him provide for their family. The applicant's spouse asserts that he, the applicant, and their child currently reside with her grandmother now that they are subsisting on his salary. The record contains financial documentation concerning the employment of the applicant and her spouse in 2010. There is no indication that the applicant's spouse has been unable to meet his financial obligations since they commenced residing with the applicant's grandmother. The record also reflects that the applicant's grandmother receives supplemental social security income.

The applicant's spouse asserts that his son would have to grow up without his mother if the applicant returned to Jamaica. The applicant's spouse also asserts that it would be very difficult for him to raise his child without the applicant's presence. The applicant's grandmother states that without the applicant, the applicant's spouse would have to drop off and pick their son up from daycare. The applicant's grandmother contends that pain in her joints and fingers do not allow her to assist in caring for her grandchild. The medical document submitted concerning the applicant's grandmother does not contain any information concerning these physical ailments or the history of strokes, cancer, and high blood pressure indicated by the applicant's spouse. It is noted that the applicant indicates that she also has a close relationship with her mother who resides in the same city. It is also noted that according to the applicant's spouse's Form G-325A, both of his parents also reside in New Jersey. There is no clear indication concerning the extent to which the applicant's mother or the applicant's spouse's parents could or would assist in the care of the applicant's child.

The applicant's mother submitted a letter stating that it would hurt her and the applicant's sister if the applicant returned to Jamaica. The applicant's spouse also asserts that it would devastate the applicant's grandmother if the applicant departed from the United States. It is noted that the applicant's sister and grandmother are not qualifying relatives in the context of this application so any hardship they would suffer will be considered only insofar as it affects the applicant's spouse. It is also acknowledged that separation from a spouse, parent, or child nearly always creates hardship for both parties. However, the applicant has not established that the hardship suffered by

her spouse, child, or mother would go beyond the common results of separation from a close family member due to separation.

The applicant's spouse asserts that he cannot relocate to Jamaica because he has found employment in the United States and there are no jobs or good health insurance in Jamaica. The applicant's spouse also states that he left Jamaica at the age of nine and his family now resides in the United States. The applicant's spouse further contends that his other son resides with his ex-wife, but that the applicant's spouse sees him on the weekends. It is noted that the record does not contain any country conditions reports concerning Jamaica. It is also noted that while there are letters of support in the record concerning the applicant and the nature and extent of her relationship ties in the United States, there are no such letters pertaining to the applicant's spouse. There is no supporting documentation for the applicant's spouse's claims indicating his visits to his older son. In fact, the only documents in the record concerning the applicant's spouse's former wife and their older son is an award of custody to the applicant's spouse's former wife and a final judgment of divorce on the grounds of extreme cruelty. 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 mother asserts that Jamaica is a nice country, but that there are no jobs or good health plans. The applicant's mother contends that the United States offers more opportunities for betterment. It is noted that the applicant's mother is a native of Jamaica and there is no information concerning her employment status in the United States. As noted above, the record does not contain any information concerning conditions in Jamaica.

The applicant's grandmother does not make any assertions concerning relocation to Jamaica. It is noted that the applicant's grandmother is a native of Jamaica. The applicant's grandmother asserts that she is a cancer, gout and arthritis patient, but there is no medical documentation concerning these claims. Absent an explanation in plain language from a treating physician of the nature and severity of any condition and a description of any treatment or assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

In the aggregate, the record contains insufficient evidence to find that the applicant's qualifying relatives would suffer hardship beyond the common consequences of inadmissibility or removal if they relocated to Jamaica.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's qualifying relatives, considered in the aggregate, rise to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish the requisite level of hardship. As the applicant has not established the requisite level of hardship, no purpose is served in determining whether she warrants a favorable exercise 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

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U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.