



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **MAR 25 2013**

Office: INDIANAPOLIS, IN

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:

[Redacted]

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Indianapolis, Indiana. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion which was granted and the previous decisions of the district director and AAO were affirmed. The matter is again before the AAO on motion. The motion will be granted, but the prior decisions of the AAO to dismiss the appeal will be affirmed. The waiver application will remain denied.

The applicant, a native and citizen of Jamaica, was found inadmissible to the United States 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 applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The applicant's spouse, child and stepchild are U.S. citizens and his mother is a lawful permanent resident.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 7, 2006. The AAO found that the applicant's mother would not experience extreme hardship upon relocation to Jamaica or remaining in the United States; and that the applicant's spouse and stepchild would experience extreme hardship upon relocation to Jamaica, but not if they remain in the United States. *AAO Decisions*, dated December 2, 2008 and April 27, 2011. The application remained denied.

On motion to reopen and reconsider, counsel asserts that the AAO failed to give sufficient weight to the applicant's spouse's statement, the AAO was not convinced by economic documents provided, and the AAO disregarded the applicant's spouse's aviophobia; and he asserts that the applicant has a U.S. citizen child who would experience extreme hardship if the waiver application is denied. *Brief in Support of Motion*, undated.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The record includes a brief in support of counsel's motion to reopen and reconsider, a statement from the applicant's child's mother, evidence of child support, and the applicant's statement. The entire record was reviewed and considered in rendering this decision.

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

- (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.

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 –

....

(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 . . . .

Regarding the applicant's ground of inadmissibility, the record reflects the commission of a crime involving moral turpitude. In March 2006, the applicant pled guilty to the offense of Fraud on Financial Institutions, in violation of section 35-43-5-8 of the Indiana Criminal Code, based on a September 2004 incident. The applicant's sentence was suspended and he was placed on probation for one year. As the applicant has not contested his inadmissibility on motion, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

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, mother and stepchild are the only 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-Morales*, 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 AAO found that the applicant's spouse and stepchild would experience extreme hardship if they relocated to Jamaica, but not if they remained in the United States. Counsel asserts that the applicant's spouse referenced aviophobia and suicidal ideations; her bills and debt prevented her

from seeking treatment; her financial documents were from 2006 as the first motion to reconsider was based on previously submitted evidence; difficulty in have children is a hardship common to the separation of spouses. The AAO notes that no new documentary evidence has been submitted to support the hardship claims to the applicant's spouse and stepchild, such as medical or financial documentation. The AAO notes that it has not been established that the applicant and his spouse cannot have children, although the AAO acknowledges the inherent difficulties of separation in this regard as a hardship factor. However, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse or stepchild would experience extreme hardship if they remained in the United States.

Counsel states that the applicant has a daughter, [REDACTED] from a relationship in 2006; he is responsible for the welfare of his daughter; and he provides \$250 a month to his daughter's mother, which covers her food, clothing and daycare.

The applicant's daughter's mother states that she and the applicant are not together, but support their daughter financially, emotionally and physically; the applicant provides their daughter \$250 a month, which helps cover her food, clothes and daycare; she is currently unemployed; she has other expenses such as school, rent and utilities, which makes it difficult for her to care for their daughter by herself; most of her money goes towards paying for her schooling; the applicant's support is helpful and important; their daughter loves spending time with the applicant; it would be very difficult or impossible for their daughter to spend time with him in Jamaica as she is too young to travel by herself; she cannot bring their daughter as she does not have a visa and the visa application is a lengthy and expensive process and is not guaranteed; and there is no room for another expense.

The record includes money orders from the applicant to his daughter's mother in the amount of \$250.

Even accepting that the applicant has a U.S. citizen daughter from a prior relationship, for which the evidence is not substantial, her mother's statement does not provide sufficient detail of the relationship between the applicant and this daughter, nor is there any other evidence of their relationship in the record. While the mother of the child indicates receiving some financial support from the applicant, the sum is not large relative to even to her known expenses, suggesting that she has another source or other sources of income. It is also not clear that the applicant could not continue providing such financial support from outside the United States. There is insufficient detail concerning how involved otherwise the applicant is in her life. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the child would experience extreme hardship if she remained in the United States, and the applicant relocated to Jamaica. In regards to relocation, no claim has been made that the child, who lives with her mother, would relocate, and under what circumstances.

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. See Section 291 of the

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Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decisions of the AAO dismissing the appeal will be affirmed. The waiver application will remain denied.

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