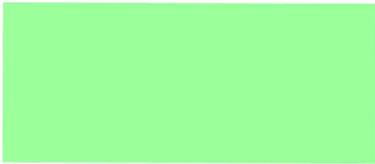




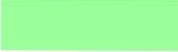
U.S. Citizenship  
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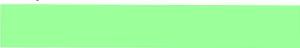
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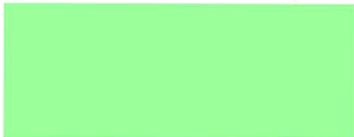
Office: JACKSONVILLE, FL

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 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, Jacksonville, 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 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 crimes involving moral turpitude. The director stated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the applicant's family ties to the United States are her U.S. citizen spouse, two lawful permanent resident sons and a U.S. citizen son. Counsel asserts that the submitted evidence shows the applicant's spouse receives treatment for lesions from a fall and has diabetes, hypertension, asthma, lumbar disc degeneration, sciatica (nerve pain), and cervical disc degeneration. Counsel declares that the applicant is needed in the United States to assist and take care of her husband so that he may provide for them. Counsel contends that the applicant's spouse will eventually have surgery and require therapy for his health problems and will need his wife's assistance. Counsel states that the applicant is not the sole provider of her spouse's care, but this is not sufficient to warrant not finding hardship. Counsel argues that when the evidence is considered in the aggregate, it demonstrates extreme hardship to the applicant's spouse.

Counsel declares that the applicant's U.S. citizen spouse has no family ties outside the United States, and the submitted information describes limited medical care in Jamaica as well as violent crime and poverty. Counsel contends that the applicant's spouse will not have access to medical services for his health problems, and if proper medical care is available it will be expensive. Counsel contends that no determination was made of the country conditions in Jamaica and the extent of the applicant's spouse's ties to Jamaica. Counsel declares that the health problems of the applicant's spouse have an adverse effect on his ability to work as a taxi driver.

We will first address the finding of inadmissibility. 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.

The Board of Immigration Appeals (Board) 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 record reflects that on October 8, 2004, the applicant pleaded guilty to and was convicted of conspiracy to possess counterfeited obligations of the United States contrary to 18 U.S.C. § 371 and possession of counterfeited obligations of the United States in violation of 18 U.S.C. § 472. The judge sentenced the applicant to serve probation for a term of three years for each crime, and ordered the terms to run concurrently.

As the applicant has not disputed on appeal that conspiracy to possess counterfeited obligations of the United States and possession of counterfeited obligations of the United States are crimes involving moral turpitude, and the record does not show the finding of inadmissibility to be erroneous, we will therefore 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 found 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, then there is an assessment of 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 1292, 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.

In rendering this decision, the AAO will consider all of the evidence in the record.

The claimed hardships to the applicant's spouse in remaining in the United States while the applicant lives in Jamaica are emotional in nature. The assertion that the applicant's spouse has health problems (diabetes, hypertension, asthma, lumbar disc degeneration, nerve pain, and cervical disc degeneration and receives treatment for lesions) is consistent with the letters from [REDACTED] dated March 3, 2010 and December 21, 2009. [REDACTED] states that the applicant's husband has insomnia and anxiety, and edema of his lower extremities due to diabetes, hypertension and weight. [REDACTED] asserts that the applicant contributes to her husband's "activities of daily living." However, despite these health problems, the record reflects that the applicant's spouse works full time as a taxi driver. The applicant's husband declares in the letter dated July 22, 2009 that he drives a taxi seven days a week for at least 80 hours every week, while his wife maintains their house. He asserts that it is dangerous in Jamaica and he would worry about his wife living there. The submitted U.S. Department of State information on Jamaica does state that Jamaica has over 2.6 million people and violence and shootings occur regularly in certain areas of Kingston and Montego Bay. The U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Jamaica* (November 17, 2011). We acknowledge that the applicant's husband has health problems, and some cause to be concerned about his wife's wellbeing in Jamaica. However, we do not find that the hardships demonstrated go beyond the common results of inadmissibility or removal to constitute extreme hardship.

The claimed hardships to the applicant's spouse in relocating to Jamaica with the applicant are lack of ties to Jamaica; violent crime, poverty in Jamaica, and no suitable medical services or if such care is available it will be unaffordable. The U.S. Department of State conveys in the aforementioned document that medical care in Jamaica is more limited than in the United States and comprehensive emergency medical services are located only in Kingston and Montego Bay. *Id.* The U.S. Department of State indicates that doctors and hospitals in Jamaica often require cash payment. *Id.* The applicant's son asserts in the letter dated July 29, 2009 that his mother has no family members in Jamaica, that jobs are limited there, and his mother and stepfather will find it difficult to survive, particularly because his stepfather's health problems will make it very difficult for him to get work in Jamaica. The record reflects that the applicant's husband has health problems which require ongoing medical care. We acknowledge that without proper care, he may suffer adverse effects that limit his ability to find and perform work for which he is qualified. We also consider the applicant's and her husband's lack of ties to Jamaica. When all the hardship factors of relocation are considered together, we find that the applicant's husband would experience extreme hardship in joining the applicant to live in Jamaica.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme

hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) and section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

**ORDER:** The appeal is dismissed.