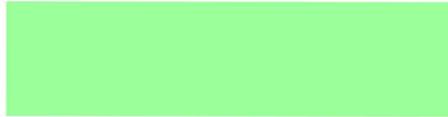




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: Office: BALTIMORE, MD
MAR 26 2013

FILE:
CONSOLIDATED

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 District Director, Baltimore, Maryland, 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, however, the underlying application remains denied.

The applicant is a native and citizen of the United Kingdom 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 committed a crime involving moral turpitude. The applicant's spouse and child are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The District Director concluded that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 25, 2008.

The AAO affirmed, finding the applicant did not demonstrate that his U.S. Citizen spouse would experience extreme hardship given his inadmissibility, and consequently dismissed the appeal. See *AAO Decision*, December 22, 2011.

On motion, counsel submits briefs in support, psychological evaluations, medical and financial records, a birth certificate, and documentation related to employment in and immigration to the United Kingdom. In the brief, counsel asserts that the applicant's spouse will suffer financial hardship upon relocation to the United Kingdom, and that she will be unable to immigrate there due to a lack of income. Counsel moreover contends that the spouse will experience financial difficulties upon separation, as well as emotional hardship. Counsel lastly claims that the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to, the documents listed above, the applicant's statement, the applicant's spouse's statement, a psychological evaluation, financial records, letters of support and a medical letter for the applicant's son. The entire record was reviewed and considered in arriving at a decision on the motion.

The record reflects that the applicant was convicted on April 29, 2004 of conspiracy to defraud and was sentenced to 30 months imprisonment by the Crown Court at Southwark. Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that "Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct." 341 U.S. 223, 232 (1951). Inadmissibility is not contested on motion. As such, the AAO affirms that the applicant committed a crime involving moral turpitude and is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

(b)(6)

(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

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 and child 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.

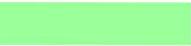
The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment,

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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.

Counsel asserts that the applicant and his spouse would have difficulty obtaining employment in the United Kingdom. A letter from [REDACTED], with a background in social work, criminology, and employment in the United Kingdom is submitted. Therein, Ms. [REDACTED] states that, in her professional experience, it is very difficult for an ex offender, such as the applicant, to obtain any form of paid employment. She indicates it will be very difficult for the applicant to find a job where he handles money because he has a conviction involving fraud. Ms. [REDACTED] adds that the current economic downturn further decreases the applicant's chances of finding employment in the United Kingdom. She opines that the applicant may only be able to find low level manual work, which pays the minimum wage of 6.08 pounds per hour. Articles on unemployment in the United Kingdom are submitted in support. Counsel contends that because of the applicant's and the spouse's inability to find employment in the United Kingdom, the spouse will not be permitted to immigrate. Articles on



(b)(6)

Page 5

immigration to the United Kingdom are submitted on motion. Counsel moreover indicates that the medical issues with respect to the applicant's son have been resolved to some degree.

Counsel moreover claims that the applicant's spouse will suffer extreme financial hardship upon separation from the applicant. Counsel submits paystubs on motion to demonstrate that the applicant's spouse earns between \$1039 and \$1239 in net pay every two weeks. Counsel reiterates that this net pay is not sufficient to meet her financial obligations, especially in light of the \$103,358 student loan she has, and the child care expenses she will have to incur if the applicant relocates to the United Kingdom without her. A printout on her student loan is submitted. Counsel additionally indicates that the spouse will experience emotional and psychological hardship upon separation. In support, counsel submits a summary of treatment for the applicant's spouse from a licensed psychologist. Therein, the psychologist indicates that the applicant's spouse suffered from post-partum depression, anxiety, as well as panic disorder. The psychologist reports that the panic disorder was so severe that the spouse had to take short-term medical disability leave from her employer. The psychologist states that the applicant moreover has had problems with anxiety since early adulthood, and had to undergo treatment involving education, identifying depression, anxiety, and panic attack triggers, training in relaxation, cognitive restructuring, in conjunction with psychotherapy. The psychologist indicates that the applicant's spouse has been in treatment since 2009. She opines that the spouse's psychological well-being would be seriously compromised if the applicant were deported.

Counsel contends neither the applicant nor his spouse will be able to find employment in the United Kingdom, which will result not only in financial hardship, but also the spouse's inability to legally immigrate to the United Kingdom. The letter from the expert indicates that the applicant will have difficulty obtaining adequate employment due to his conviction and the economy. However, the applicant's Form G-325A, Biographic information, reveals that the applicant had employment in the United Kingdom after the date of his conviction until October 2005, when he relocated to the United States. This employment history is not discussed on motion. Given this, limited weight can be given to claims that the applicant will be unable to find employment in the United Kingdom due to his fraud conviction. Furthermore, there is insufficient evidence of record demonstrating that the applicant's spouse, given her education and experience, would be unable to find adequate employment in the United Kingdom. By extension, there is insufficient evidence to support counsel's assertion that the spouse will have difficulties immigrating to the United Kingdom. Without sufficient supporting evidence, the AAO can give only limited weight to these assertions.

The AAO notes that relocating to the United Kingdom will entail difficulties, such as separation from family and friends as well as leaving her current employment. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to the United Kingdom.

Documentation of record demonstrates that the applicant's spouse would experience emotional and financial hardship upon separation. The applicant submitted evidence establishing that his spouse's psychological issues have been in existence since 2009, and that her symptoms were so severe she had to take time away from work. Moreover, the applicant has shown that his spouse's emotional hardship would be exacerbated if he returned to the United Kingdom, leaving her with two young children. The record also demonstrates that the applicant's spouse may have financial difficulties without the applicant's support due to her income and her responsibilities towards her two children. Given this evidence, the AAO concludes that the applicant's spouse would experience emotional and financial hardship without the applicant present.

The AAO therefore finds there is sufficient 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 establishes that the financial, psychological / emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant returns to the United Kingdom without his spouse.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the 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 his U.S. Citizen spouse 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(i) 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.