



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAY 06 2013

Office: GUATEMALA CITY

FILE: [REDACTED]

IN RE: [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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Officer Director, Guatemala City, Guatemala. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Belize, is 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 multiple crimes involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen mother. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen mother.¹

In a decision dated April 25, 2012, the Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and the waiver was denied accordingly.

On appeal, the applicant submits additional evidence that he states establishes that his qualifying relative would suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to a statement from the applicant, a statement from the applicant's mother, documentation concerning the applicant's mother's health, documentation concerning the applicant's moral character, documentation of the applicant's mother's employment and expenses, country conditions information on Belize, and documentation of the applicant's criminal and immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under section 212(a)(2) of the Act which provides, in pertinent part,

(A)(i) Except as provided in clause (ii), any 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, or...

is inadmissible.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

¹ The applicant was ordered removed from the United States on May 11, 2011 and was physically removed on August 10, 2001. As ten years have passed since his removal, he is no longer inadmissible under 212(a)(9)(A)(ii) of the Act and does not require Permission to Reapply for Admission after Deportation or Removal (Form I-212).

(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 record establishes that the applicant has three convictions. The latest conviction was on January 31, 2001 for Theft in violation of Texas Penal Code section 30.04, with enhancement due to the applicant's prior convictions. The applicant was previously convicted of Theft in violation of Texas Penal Code section 30.04 on March 28, 2000 and of Burglary of a Vehicle in violation of Texas Penal Code section 31.03 on October 9, 1992. The Field Office Director found the applicant to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of his convictions and the applicant does not contest this finding of inadmissibility on appeal. As the applicant has not contested his inadmissibility on appeal, and the record does not show the Field Office Director's determination to be in error, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A) of the Act. The AAO also notes that the applicant was previously a lawful permanent resident of the United States, but was placed in removal proceedings and removed based on his convictions for what the Immigration Judge determined were crimes involving moral turpitude under sections 237(a)(2)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1227(a)(2)(A)(i) and (ii).

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(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.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the activities that are the basis for the applicant's last conviction leading to inadmissibility under section 212(a)(2)(A) did not occur more than 15 years ago, he must prove that the denial of his admission would result in extreme hardship to a qualifying relative. A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes a U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen mother is the only qualifying relative established in the record. The AAO notes that although the record indicates that the applicant may have a U.S. citizen son, but the birth certificate for said child in the record does not list the father of the child. Moreover, neither the applicant nor his mother mentions the child in their statements. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and the AAO 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 deportation, 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, 885 (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 (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.

We will first consider the hardship claimed to the applicant’s U.S. citizen mother if she were to remain in the United States and be separated from the applicant. The applicant’s mother is a 63 year old U.S. citizen and native of Belize who resides in Dallas, Texas. In her statement, the applicant’s mother states that she has suffered from physical, emotional, and financial hardship as a result of separation from the applicant. In regards to her emotional and physical hardship, she states that she has been suffering from depression, hypertension, and osteoporosis. A letter in the record dated May 11, 2012 from [REDACTED] states that the applicant’s mother has been under the clinic’s care since 2008 and is being treated for “hypertension, depression, and osteoporosis.” Additionally, a statement from [REDACTED] lists various medications that were prescribed to the applicant’s mother in August, September, and November of 2010. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. Here, the record does not establish how the applicant’s mother’s condition is affected by separation from the applicant. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the

position to reach conclusions concerning the severity of a medical condition or the treatment needed. The AAO nonetheless takes note of the applicant's mother's conditions as indicated in the record, and it will consider in the aggregate with the other types of hardship documented in the record. The applicant's mother also states that separation from the applicant has caused her financial hardship as she is responsible for her mortgage and also sends financial support to the applicant in Belize. The applicant's mother states that the applicant is unemployed in Belize; however, other letters in the record indicate that the applicant has been employed. Additionally, the only indication in the record of the amount of financial support that the applicant's mother sends to Belize are three money wire transactions, \$1103.41 sent on December 10, 2009, \$208.99 sent on August 12, 2010, and \$1129.99 sent on August 25, 2010. A letter from the applicant's mother's employer indicates that the applicant's mother earns \$29,129 per year as a housekeeper and nanny, although no tax returns were submitted to provide a clear picture of the applicant's mother's income. The record also indicates that the applicant's mother monthly payment on her mortgage as of December 16, 2010 was \$1,085.10. The record does not indicate that the applicant's mother is unable to pay her mortgage or her other expenses. The AAO recognizes that the applicant's mother is suffering hardship as a result from separation from the applicant; however, the hardships documented in the record, even when considered in the aggregate, do not rise to the level of extreme hardship.

We must also consider whether the applicant's U.S. citizen mother would suffer extreme hardship should she relocate to her native Belize to reside with the applicant. The applicant's mother states that she relies on the medical care that she receives in the United States and she would not have health insurance in Belize. She also states that she has strong family ties in the United States, including her elderly parents for whom she provides care. The record contains letters from the applicant's mother's parents, as well as her other children and her grandchildren who reside near the applicant's mother in Dallas, Texas. The AAO notes the applicant's mother's long residence and strong family ties in the United States; however, the record does not establish that the applicant's mother could not maintain relationships with her family members should she relocate to Belize. The record also does not contain supporting evidence to document the support that the applicant's mother states that she provides to her elderly parents. Although the applicant's mother's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 AAO also notes that applicant's mother's medical conditions. However, there is no indication that treatment for her conditions would be unavailable in Belize. The AAO notes the documentation in the record concerning the high incidence of crime in Belize, but no documentation was submitted to support the claim that the applicant's mother would not be able to obtain medical care in that country. Additionally, although an article was submitted indicating

that an individual who the applicant's mother states was a family member was brutally murdered in Belize on May 16, 2001 in a robbery, this does not indicate that the applicant's mother would be at heightened risk for a violent crime. The AAO notes that the applicant has resided in Belize for 10 years and he does not report issues with crime and medical care in Belize. Additionally, there is conflicting evidence in the record as to whether the applicant has been gainfully employed in Belize. As such, it is not clear if he could and would support his mother were she to relocate there nor is it established in the record that the applicant's mother would be unable to obtain employment in that country. The evidence, considered in the aggregate, does not establish that the applicant's mother would suffer extreme hardship were she to relocate abroad to reside with the applicant.

Although the applicant's mother's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen father will face extreme hardship if the applicant is not granted a waiver of inadmissibility. Although the AAO acknowledges that the applicant's father will suffer some hardship, the record does not establish that the hardship rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under section 212(h) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.