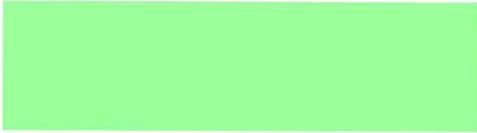


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



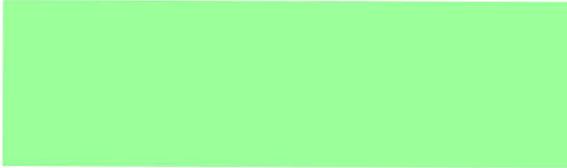
DATE: Office: OAKLAND PARK, FL
NOV 06 2013

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h), 8 U.S.C. § 1182(h) of the Immigration and Nationality Act.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The record reflects that the applicant is a native and citizen of Israel 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 does not contest the finding of inadmissibility. The applicant's mother is a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on the applicant's mother and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO found that the applicant had failed to establish that extreme hardship would be imposed upon his mother, specifically if she remained in the United States, and dismissed the appeal accordingly.

On motion, counsel asserts that the applicant's mother would suffer extreme hardship if she remained in the United States.

The record includes but is not limited to, counsel's motion, statements from the applicant and his mother, criminal records, financial records and medical records. The entire record was reviewed and considered in rendering this decision.

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

- (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 AAO previously found that the applicant's offense of false and fraudulent insurance claims to defraud an insurer involve moral turpitude in view of *Jordan v. DeGeorge*, 341 U.S. 223, 232 (1951), wherein the U.S. Supreme Court stated that "[t]he phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct."

The record establishes, and counsel does not contest, that the applicant's offense involves moral turpitude. Thus, the applicant is rendered inadmissible under section 212(a)(2)(A)(i)(I) of the Act. 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 [now Secretary of Homeland Security, "Secretary"] 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 [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 mother is the only qualifying relative 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.

As the AAO has already found that the applicant’s mother would experience extreme hardship if she relocates to Israel, it will only address the applicant’s claims related to hardship his mother would experience upon remaining in the United States.

The applicant’s mother states that she suffers from medical conditions and relies on the applicant for support. She states that she has a circulatory problem in her legs that is painful and has permanent injuries to her knees, neck and hand from an auto accident in 2005. She states that she would be deprived of emotional and financial support from the applicant. She states that she is 66 years-old and lives with the applicant; the applicant is her only family member in the United States; and she is not married and her other two children live in Israel. She states that the applicant has a wig business in Florida, and he is a source of financial support.

A 2010 letter from a licensed family therapist states that the applicant’s mother is grateful for the support and comfort of being with the applicant after their long separation, and both have health issues for which they need each other.

The record contains medical records from 2005, prepared after the applicant’s mother’s car accident in April 2005. A September 2005 report indicates the applicant’s mother appears to have “sustained permanent impairment” but does not specify how the applicant’s mother’s impairment is permanent. Medical records from 2007 show the applicant’s mother underwent a procedure related to urinary incontinence, and records from 2009 show degenerative disc disease. The applicant also has submitted

a 2009 record from an orthopedic center as well as outpatient discharge instructions and a medication list from 2010.

The record includes bank statements issued between March and May 2013 for the applicant's wig-business checking account, and bank and Social Security statements for his mother. An incomplete statement for his mother's bank account shows she received a Social Security deposit of \$322 in August 2013.

The record contains minimal documentary evidence of emotional and financial hardship that the applicant's mother would experience if she remained in the United States without the applicant. Though the applicant's mother claims that the applicant assists her financially, the evidence in the record does not reflect the extent of his assistance or other relevant information concerning his mother's financial circumstances that would support concluding that without the applicant, she would experience economic hardship. Moreover, the most recent medical records submitted with the applicant's appeal and motion are dated 2010. The evidence does not reflect the applicant's mother's current medical state, the severity of her medical conditions, or the extent to which she now relies on the applicant. Based on the evidence in the record, the AAO finds that there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in their totality, establish that a qualifying relative would suffer extreme hardship upon remaining in the United States.

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 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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 underlying application remains denied.

ORDER: The motion is granted and the underlying application remains denied.