



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: NOV 22 2013

Office: CHICAGO

IN RE: Applicant:

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

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, Chicago, Illinois. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). A motion to reopen and reconsider was granted by the AAO, and the AAO affirmed its previous decision. The matter is again before the AAO on a motion. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant is a native and citizen of Poland 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's spouse and two stepchildren are U.S. citizens, and his child is a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The field office director concluded that the applicant had failed to establish eligibility for a section 212(h) waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 12, 2007.

The AAO, reviewing the applicant's Form I-601 on appeal, also found the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The AAO found that the record established that the applicant was arrested in Poland on March 26, 1996 and convicted on October 21, 2002 of several offenses, including obtaining bank loans under false pretenses.¹ However, on his October 22, 2002 nonimmigrant visa application, the applicant indicated that he had never been arrested or convicted of any crime. As such, the applicant is also inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for willfully misrepresenting a material fact in order to procure a visa to the United States. *Decision of the AAO*, dated May 18, 2010.

Although the applicant is inadmissible under both section 212(a)(2)(A)(i)(I) and section 212(a)(6)(C)(i) of the Act, the AAO will not consider the applicant's eligibility for a waiver under section 212(h) of the Act, as the applicant also must satisfy the more restrictive requirements of section 212(i). Establishing extreme hardship under section 212(i) of the Act will also satisfy the requirements for a waiver of inadmissibility under section 212(h) of the Act.

On June 17, 2010, the applicant, through counsel, filed a motion to reopen and reconsider the AAO's decision. The AAO granted the motion and affirmed its prior decision. *Decision of the AAO*, dated February 27, 2013. The applicant subsequently, through new counsel, filed a second motion to reopen the AAO's decision on March 18, 2013.

In the second motion to reopen, applicant's counsel asserts that the applicant provided ample evidence to show the applicant's spouse would suffer extreme hardship if the waiver application is not approved. Counsel adds that the applicant has learned that Polish authorities have issued a judgment and possibly a warrant against him and requests more time in order to provide additional

¹ Because the applicant was convicted of a crime involving fraud, the field office director correctly found him to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude.

support evidence. However, no additional evidence regarding the applicant's conviction in Poland was received by the AAO; thus the record is considered complete as of the date of this decision.

The record includes, but is not limited to, the following documentation: affidavits from the applicant, the applicant's wife, and the applicant's daughter and stepchildren; financial documentation; country conditions information about Poland; and documentation submitted with the applicant's Form I-601, his appeal, and his first motion. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(i) 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 or parent 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 spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

On motion, counsel contends that the applicant submitted ample evidence to show the extreme emotional hardship that the applicant's spouse would experience if the applicant is removed to Poland and also asserts that the AAO erred in concluding that the psychological evaluation failed to provide a detailed analysis. The record includes a psychosocial evaluation of the applicant's spouse and two stepchildren prepared by a social worker, dated October 11, 2006, that the AAO previously found to be largely a recounting of the personal histories each provided to the social worker. The AAO also found that the evaluation focuses on the histories of the applicant and his stepchildren, who are not qualifying relatives in this proceeding; the evaluation lacks the type of detailed psychological analysis that typically supports a mental-health diagnosis; and the evaluation was not the product of an ongoing treatment relationship. Counsel does not explain, on motion, how the AAO erred in its analysis of this report in its previous decisions. In addition, the psychosocial evaluation is now seven years old, and the record does not contain more recent evidence from mental-health professionals to support claims that the applicant's spouse is experiencing psychological hardship. Though the record shows that the applicant's spouse would experience emotional hardship as a result of separation from the applicant, it remains insufficient to conclude that the emotional issues that the applicant's spouse is experiencing, considered with other evidence of hardship in the aggregate, would cause her hardship beyond the common results of removal or inadmissibility.

Counsel further contends that the AAO failed to consider the financial hardship to the applicant's spouse if the waiver application is not approved. The record indicates that the applicant's spouse owns a tax preparation company, and copies of recent federal income tax returns indicate that the adjusted gross income for the household exceeds \$100,000 per year, mainly due to the income and assets of the applicant's spouse. The applicant provides no new evidence to show that his spouse would experience financial hardship if she were to remain in the United States. The evidence in the record is insufficient to conclude that the qualifying spouse could not meet her financial obligations in the applicant's absence.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

Concerning hardship that the applicant's spouse would experience if she were to relocate, on motion counsel asserts that the AAO failed to consider the strong family and community ties that the applicant's spouse has to the United States. However, in its previous decision the AAO concluded that the record establishes that the applicant's spouse has resided in the United States for more than 30 years and has strong family and communities ties to the United States. The AAO found that the applicant established that his spouse would suffer extreme hardship were she to relocate abroad to reside with him due to his inadmissibility.

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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is granted and the prior decision of the AAO is affirmed.