



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

(b)(6)

Date: NOV 22 2013

Office: TAMPA, FL

IN RE:

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

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.

Thank you,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tampa, Florida, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act for having been convicted of Possession of Marijuana, under 20 grams. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering his wife suffers from depression, needs to take care of her mother who suffers from alcoholism and bipolar disorder, and country conditions in Honduras where the applicant would be unable to receive proper medical treatment for his own medical problems.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on September 4, 2010; letters from the applicant; letters from [REDACTED] medication management evaluations for [REDACTED] mother; documents from the Air Force; copies of medical records; a letter from the applicant's former employer; a copy of the U.S. Department of State's Travel Warning for Honduras and other background materials; copies of tax records, bills, and other financial documents; numerous letters of support; copies of criminal records; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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, or
- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21),

is inadmissible.

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

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States...

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), (D), and (E) of subsection (a)(2) of this section and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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 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

In this case, the field office director found, and counsel concedes, that in October 2009, the applicant was convicted of possession of marijuana of not more than 20 grams in violation of Florida Statutes § 893.13(6)(b). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The applicant is eligible to apply for a waiver under section 212(h)(1)(B) of the Act.

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.

In this case, the applicant's wife, [REDACTED] states that she and her husband have been together since they were sixteen years old. She contends she was born and raised in Florida, is a fifth generation Floridian, and served four years in the U.S. Air Force after joining the military at the age of seventeen. She states she has already spent a lot of time away from her husband when she was stationed in Ohio and Iraq. According to [REDACTED] she has been suffering from depression as a result of her combat experience in Iraq. She states she is unable to sleep normal hours, sometimes sleeps too much, has unstable weight, frequent mood swings, and difficulty concentrating. She contends she is receiving psychological treatment at the VA hospital. In addition, [REDACTED] contends her mother has been diagnosed with bipolar disorder, that no one else can help her mother, and that at one point, she had to drive her mother everywhere because she lost her driving privileges due to a DUI conviction. Furthermore, [REDACTED] states she is a Licensed Massage Therapist and Aesthetician and that she is currently attending school full-time for advanced training in the aesthetician field. She contends she will need to take additional classes in order to renew her license every two years. [REDACTED] also states that she cannot support herself without her husband's financial support. She states that if her husband moves to Honduras, she would have to move back in with her parents and would have to give up their two dogs who are family. Moreover, [REDACTED] states it would be very difficult for her to relocate to Honduras to be with her husband because of the poor living conditions there. She states that employment opportunities for Massage Therapists or Aestheticians in Honduras are slim to none.

After a careful review of the entire record, the AAO finds that if the applicant's wife, [REDACTED] relocated to Honduras to be with her husband, she would experience extreme hardship. According to letters from [REDACTED] father and stepmother in the record, [REDACTED] suffered abandonment issues when she was young after her parents divorced and her biological mother left. They state she had visits with her biological mother later in life, but that the visits were inconsistent, leaving Ms. [REDACTED] feeling confused, guilty, and anxious. [REDACTED] stepmother describes instances during Ms. [REDACTED] s childhood when she was afraid her father and stepmother would leave her, resulting in Ms. [REDACTED] seeing a psychologist. [REDACTED] stepmother also describes how withdrawn [REDACTED] was when she returned from Iraq and contends she fears for [REDACTED] s mental well-being if her husband's waiver application were denied. The applicant's mother describes [REDACTED] as having "post-traumatic stress." The record contains documentation corroborating [REDACTED] contentions that she served in the U.S. Air Force, was stationed in Iraq, and that her biological mother has been diagnosed with bipolar disorder as well as alcohol dependence. As such, the AAO acknowledges Ms. [REDACTED] contention that she has been depressed since returning from Iraq and that she has a family history of psychological problems. In addition, the AAO acknowledges the applicant's contention that [REDACTED] does not speak Spanish and the record shows she was born and raised in the United States. [REDACTED] would need to adjust to living in Honduras after having lived her entire life in the United States, a difficult situation made even more complicated by her mental health issues. Moreover, the record contains evidence addressing country conditions in Honduras and, as counsel contends, the U.S. Department of State has issued a Travel Warning for Honduras stating that crime and violence remains critically high. *U.S. Department of State, Travel Warning,*

Honduras, dated June 17, 2013. Furthermore, the U.S. Department of Homeland Security has extended Temporary Protected Status for Honduran nationals through January 5, 2015. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she relocated to Honduras to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that if [REDACTED] remains in the United States without her husband, she would suffer extreme hardship. As stated above, the record shows [REDACTED] has a personal history, as well as a family history, of psychological issues and, in particular, abandonment issues. The AAO acknowledges that the couple has known each other since they were teenagers and letters in the record describe [REDACTED] emotional dependence on her husband. Moreover, the record contains documentation showing the applicant has a history of cellulitis, skin abscesses, and a staff infection in 2007, 2010, 2011. The AAO takes administrative notice that medical facilities, equipment, and supplies are not up to U.S. standards anywhere in Honduras, *U.S. Department of State, Country Specific Information, Honduras*, dated October 9, 2013. Considering the applicant's medical issues and country conditions in Honduras, the AAO acknowledges [REDACTED] would be reasonably concerned about her husband's health and safety. Considering the unique circumstances in this case cumulatively, the AAO finds that the hardship the applicant's wife would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's conviction for marijuana possession. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including his U.S. citizen wife, a U.S. citizen sibling, and two lawful permanent resident siblings; the extreme hardship to the applicant's entire family if he were refused admission; numerous letters of support describing the applicant as a good-hearted person who always helps others, particularly his brother who uses a wheelchair and depends on the applicant for assistance; the applicant's successful completion and early termination of his probation; and the applicant's remorse for his criminal conviction.

The AAO finds that, although the applicant's criminal conviction is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 been met.

ORDER: The appeal is sustained.