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

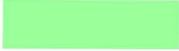


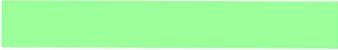
U.S. Citizenship
and Immigration
Services



DATE: OCT 02 2013

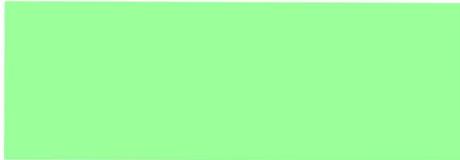
OFFICE: NEWARK

FILE: 

IN RE: 

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

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

A small handwritten letter "R" in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the prior AAO decision is affirmed.

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry to the United States by fraud or willful misrepresentation. The applicant was also found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon separation and denied the application accordingly. *See Decision of the Field Office Director*, dated September 29, 2011. On appeal, the AAO also determined that the applicant failed to establish extreme hardship to a qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated January 11, 2013.

The applicant has submitted a motion to reopen or reconsider the dismissal of his appeal. The AAO will grant the applicant's motion to reopen. On the applicant's motion, counsel for the applicant asserts that the applicant has submitted additional documentary evidence to establish extreme hardship to his spouse.

In support of the applicant's motion to reopen and reconsider, the applicant submitted financial documentation and medical documentation concerning the applicant's mother-in-law. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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

The applicant does not dispute the AAO's prior inadmissibility finding, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based upon his conviction for crime/crimes involving moral turpitude. The AAO previously determined that the applicant had been convicted of theft from vehicle; using threatening, abusive, insulting words or behavior with intent to cause fear or provocation of violence; driving a motor vehicle with excess alcohol; and destroy or damage property with a value of £5,000 or less.

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:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 Attorney General (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...

The applicant entered the United States pursuant to the Visa Waiver Program on December 21, 2006. Prior to his entry into the United States pursuant to the Visa Waiver Program, the applicant's spouse signed a Form I-129F, Petition for Alien Fiancé, to be submitted on behalf of the applicant, on December 14, 2006. The applicant's spouse's petition was received on the date of the applicant's entry to the United States, December 21, 2006. The applicant signed the accompanying Form G-325A, Biographic Information, on October 1, 2006.

The applicant and his spouse assert that the applicant formulated his intent to reside in the United States subsequent to the applicant's entry to the United States on December 21, 2006. The applicant contends that it was only on his second visit, December 21, 2006, that he realized that he could not live without the applicant's spouse. The applicant's spouse contends that, on that visit, she was surprised that the applicant expressed a resolve to remain in the United States. Counsel for the applicant asserts that the applicant's spouse submitted the Form I-129F, Petition for Alien Fiancé, so that the applicant could possibly come to the United States in the future.

The submission of forms by both the applicant and the applicant's spouse in support of an alien fiancé visa for the applicant evidences the applicant's intent to marry and reside in the United States. The submission of these forms prior to the applicant's entry pursuant to the Visa Waiver Program indicates that the applicant formulated this intent prior to his entry. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

As the applicant's waiver application under 212(i) of the Act is the most restrictive of the waivers for which he is applying, his appeal will be adjudicated in accordance with this section. A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

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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 the present case, the record reflects that the applicant is a 41 year-old native and citizen of the United Kingdom. The applicant's spouse is a 37 year-old native and citizen of the United States. The applicant is currently residing with his spouse and children in [REDACTED] New Jersey.

The applicant's spouse asserts that she lost her job in January 2010 and would have difficulty procuring employment because she has not worked since that time and was terminated from her previous position. The applicant's spouse contends that she exclusively relies upon the applicant to financially support their family. The record contains an expense sheet indicating the monthly household expenses for the applicant's family. As noted in the AAO's prior decision, the record does not contain supporting financial receipts indicating that the applicant's spouse's family are paying their most expensive listed household expenses, \$2270.33 in health insurance and \$2000 in rent to her mother.

Counsel for the applicant submitted a 2012 W-2 form for the applicant's spouse's mother reflecting earnings of \$25,183.86 after taxes. Counsel asserts that the applicant's spouse's mother has her own debts and that it would be inappropriate for the applicant's spouse's family to rely upon her for financial support. The applicant's spouse's mother's tax records for 2010 indicate wages of \$24,701, but reflect an adjusted gross income of \$106,555 with her additional forms of income. The record does not contain a 2012 tax return for the applicant's spouse's mother reflecting her most recent adjusted gross income. It is also noted that the applicant's spouse's family currently resides with the applicant's spouse's mother, who asserts that they are her reason for getting up in the morning. There is no indication that the applicant's spouse's mother would or could not provide the applicant's spouse's family with financial assistance, as necessary. In fact, the record contains a letter from the applicant's spouse's sister stating that she, another sister, and their mother, would provide the applicant's spouse with assistance to the best of their abilities.

Though the applicant's spouse is not currently employed, the record reflects that she possesses nearly seven years of experience as a manager in the retail industry, most recently a U.S. Area Manager for [REDACTED]. The record contains a letter from her previous employer indicating a base salary of \$104,856. The applicant's spouse asserts that she would be unable to return to work because she cares for her children and lost her previous position. There is no indication that the applicant's spouse was terminated for cause or that the applicant's spouse would be unable to secure a similar position in the retail industry. It is noted that one of the applicant's spouse's children is currently attending nursery school and day care and there is no indication that, if employed, the applicant's spouse would be unable to retain caretakers for all her children.

The applicant's spouse asserts that she feels safe and happy with the applicant and that it would be devastating if they were separated. The applicant's spouse also contends that the applicant has a close relationship with their children. It is noted that the applicant's children are not qualifying relatives in the context of this application so that any hardship they would suffer will be considered insofar as it affects the applicant's spouse.

The applicant's spouse asserts that she suffered from postpartum depression following the birth of her second and third children, for which she was taking medication. The record contains a physician's letter, dated August 25, 2011, stating that the applicant's spouse was being treated for postpartum care and depression, for which she was prescribed Lexapro. It is noted that the applicant's spouse's youngest child is nearly two years of age and the record does not contain updated reports concerning her postpartum depression.

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The record also contains a psychological assessment of the applicant's spouse stating that the applicant's spouse indicated that she was raped in college, resulting in a post-trauma reaction. The assessment concluded that the applicant's spouse was experiencing symptoms of anxiety and depression that did not meet the criteria for diagnosis, but that could further develop depending upon additional stressors. It is acknowledged that separation from a spouse nearly always creates hardship for both parties and the record establishes that the applicant's spouse would suffer emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Although the depth of concern and anxiety 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. While 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 exists.

The applicant's spouse asserts that she cannot relocate to the United Kingdom to reside with the applicant because she would leave behind her ties in the United States. The record contains letters of support from the applicant's spouse's mother and two sisters, all residing in New Jersey. The applicant's spouse states that she resides with her mother and sees her sisters several times each week.

The applicant's spouse contends that her mother suffers from depression and suffered two prior heart attacks following emotionally stressful events. The applicant's spouse asserts that her mother is very close to the applicant's spouse and her children so that any separation would exacerbate her medical conditions. The applicant's spouse contends that she would be unable to forgive herself if she was the cause of any further medical issues for her mother. The applicant's spouse's mother submitted a letter asserting that the applicant's spouse's family is her life and that she does not know how she could handle their absence. The record also contains a letter from the applicant's spouse's mother's physician stating that she has been a patient for over ten years, with a history of myocardial infarction and coronary stenting. The physician's letter further states that excessive physical or emotional stress could potentially exacerbate her cardiac condition.

The applicant's spouse asserts that she is not accustomed to the United Kingdom and has no ties in that country. The applicant's spouse also asserts that she would be concerned about her family's ability to financially survive upon relocation and find caretakers for her children. The psychological assessment of the applicant's spouse states that, upon relocation, she would suffer psychological deterioration. In this case, the AAO concurs that the record contains sufficient evidence to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to the United Kingdom.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) 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 this waiver as a matter of discretion.

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. Accordingly, the prior AAO decision is affirmed.

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