

(b)(6)

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



U.S. Citizenship
and Immigration
Services

DATE: OCT 03 2013

Office: CHICAGO

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 (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 that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for a waiver of inadmissibility was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan who was found to be inadmissible under 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 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 spouse.

On January 16, 2013, the Field Office Director determined that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility accordingly.

On appeal, the applicant submits additional evidence and states that the record demonstrates that his U.S. citizen spouse will suffer extreme hardship as result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to: an affidavit from the applicant's spouse; medical records for the applicant's spouse; a letter from the applicant's adult stepson; letters of support from friends of the applicant and his spouse; biographical information for the applicant and his spouse; financial records for the applicant and his spouse; and documentation of the applicant's criminal and immigration history.

The applicant was found to be inadmissible under Section 212(a)(2)(A) of the Act which 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.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record indicates that on April 8, 2009, before the [REDACTED] Illinois, the applicant was convicted of Retail Theft/Display Merchandise in violation of Illinois Criminal Statute (ILCS) Chapter 720 §5/16A-3(A). The applicant was fined and was ordered to serve 24 months of probation.

At the time of the applicant's conviction, 720 ILCS 5/16A-3(A) stated:

A person commits the offense of retail theft when he or she knowingly:

- (a) Takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise;

The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). In *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board of Immigration Appeals found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. Here, the statute of conviction makes clear that theft under this section of the statute involves a permanent intent to deprive the merchant. Thus, the AAO finds that the applicant's conviction for Retail Theft under 720 ILCS 5/16A-3(A) constitutes a crime involving moral turpitude.

Furthermore, 730 ILCS 5/5-8-1 states that the maximum punishment for committing Retail Theft of greater than \$150 in value, a Class 3 felony, is imprisonment for a term of not less than two years and not more than five years. Thus, this conviction does not qualify for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. However, the applicant is eligible to apply for a waiver under section 212(h) of the Act.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) 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

(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

... 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,

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

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.

Since the activities that are the basis for the applicant's last conviction leading to inadmissibility under section 212(a)(2)(A) occurred within the past 15 years, he must prove that the denial of his admission would result in extreme hardship to 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 spouse is the only qualifying relative in this case. Although the record indicates that the applicant has a stepson, no information has been put forth by the applicant suggesting that his adult stepson would suffer from extreme hardship as a result of his inadmissibility. 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.

On appeal, the applicant's U.S. citizen spouse states that she will suffer extreme hardship as a result of the applicant's inadmissibility. We will first consider the hardship claimed to the

applicant's spouse if she were to remain in the United States and be separated from the applicant. The applicant and his spouse were married on October 13, 2006. The applicant's spouse is a native of the United States and is 73 years old. The applicant, a native of Jordan, is 55 years old. The applicant's spouse states that she loves the applicant and that she would be lost without him. The applicant's spouse's adult son submitted a letter stating that he has witnessed the applicant's love for and care of his mother. The emotional hardship that the applicant's spouse would experience from separation from her loved one will be taken into account with the other hardships documented on record.

The applicant's spouse states that she suffers from multiple medical conditions and that she relies on the applicant to take her to her medical appointments. In support of this statement, the record contains a letter from [REDACTED] in Crest Hill, Illinois. The letter states that the applicant's spouse has been under the clinic's care for 38 different conditions, but the letter does not state when the applicant was treated for those conditions and what the status of each of those conditions was at the time of the letter. Instead, the letter simply states that the applicant spouse has been a patient of the clinic since 2009 and "has had multiple medical conditions, some serious over the last few years and often comes as often as monthly for visits." The letter further states that "due to her multiple conditions, she can be depressed and despondent at times" and that she depends on the applicant "for support and assistance during her times of illness as well as every day." What the record does not make clear is what assistance the applicant's spouse needs every day. Moreover, it is not clear why the applicant cannot rely on her adult son, who the record indicates resides in Illinois, or other means of transportation to monthly doctor's appointments. Another document in the record indicates that the applicant takes his spouse for lab work weekly to [REDACTED]. The record does not make clear for what condition the applicant's spouse has lab work performed on a weekly basis, the significance of that lab work, and whether the applicant's spouse has other means of transportation to obtain the lab work. Significant conditions of health are relevant factors in establishing extreme hardship. In this case, however, the evidence on the record is insufficient to establish what conditions the applicant's spouse currently suffers from and what assistance she requires from the applicant on a daily basis as a result of those conditions. The record also fails to indicate whether the applicant's spouse would have access to other means of support from her son or others if the applicant were no longer able to provide her transportation.

There is no documentation in the record concerning other types of hardship that the applicant's spouse would experience if she were to be separated from the applicant, such as financial hardship. The record indicates that the applicant works as a "peddler" and his spouse is retired. The record also indicates that the applicant's spouse's adult son has claimed the applicant's spouse as a dependent on his tax returns, suggesting that he has provided financial support for his mother. It is the applicant's burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case as a result of the applicant's spouse's separation from the applicant would be extreme. *Matter of O-J-O*, 21 I&N Dec. at 383.

The applicant does not address what hardship his spouse would experience were she to relocate to Jordan to reside with the applicant. The record contains documentation of the applicant's spouse's medical conditions for which she has been treated in previous year, but there is no documentation to indicate what exact conditions the applicant's spouse suffers from at this time, what treatment is needed, and whether that treatment would be available in Jordan. The record also fails to document what hardship, if any, the applicant's spouse would experience were she to be separated from her family in the United States. Considered in the aggregate, the hardship to the applicant's spouse as a result of relocation to Jordan, does not rise to the level of extreme beyond the common results of removal.

Although the applicant's spouse'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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying relative as required under section 212(h) of the Act. As such, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In application proceedings, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.