



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: SEP 11 2013

Office: TAMPA, FL

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:

[REDACTED]

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, Tampa, Florida. The field office director's decision was appealed to the Administrative Appeals Office (AAO) and the appeal was dismissed. The matter is now before the AAO on motion. The motion will be granted, and the AAO's previous decision will be affirmed.

The applicant is a native and citizen of Malawi 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 committed crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse, three U.S. citizen children, and two U.S. citizen stepchildren.

In a decision, dated November 8, 2011, the field office director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserted that the applicant's spouse and infant daughter would suffer extreme hardship as a result of the applicant's inadmissibility and that the applicant was deserving of a favorable exercise of discretion.

In a decision, dated June 3, 2013, the AAO found that the applicant had established that his U.S. citizen wife and children would suffer extreme hardship upon relocation, but had not established that they would suffer extreme hardship upon separation. We denied the appeal accordingly.

On motion, counsel states that the applicant's spouse would suffer extreme emotional and financial hardship as a result of separation because she would be separated from the sole income earner of the family, she is no longer able to rely on her mother for support, and she would be left to raise her children on her own. Counsel asserts that the degree of hardship in this case rises to the level of extreme and is consistent with prior AAO decisions as well as *Salcido-Salcido v. INS.*, 138 F.3d 1292 (9th Cir. 1998). On motion counsel submits: an updated affidavit from the applicant's wife, a joint tax return with supporting documentation for 2012, proof of health insurance, documentation regarding monthly rental payments, a letter from the applicant's daughter, educational documentation for the applicant's daughter, and an adoption decree showing that the applicant is now the legal father of the his spouse's daughter from a previous relationship.

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.

On appeal, we affirmed the field office director’s finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. We found that the applicant’s convictions under Michigan Penal Code, Sec. 750.218(a) for False Pretenses and Sec. 750.535(4)(a) for receiving and concealing stolen property were crimes involving moral turpitude. The applicant did not contest his inadmissibility on appeal and does not contest his inadmissibility on motion.

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 –

....

(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

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 spouse and children are the qualifying relatives 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-Moralez*, 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. I.N.S.*, 138 F.3d 1292 (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.

The record of hardship on appeal included: employment documentation, a birth certificate for the applicant's daughter born in August 2011, a statement from the applicant, a statement from the applicant's spouse, birth certificates for the applicant's other children and stepchildren, medical documentation, educational documents, and country conditions information for Malawi.

As stated above, we found on appeal that the record established that the applicant's spouse and children would suffer extreme hardship as a result of relocation, but did not establish that the applicant's spouse and/or children would suffer extreme hardship as a result of separation.

The record indicated that the applicant's spouse has four children, one who is biologically the applicant's, one who has been adopted by the applicant, and two who are adults. The applicant's spouse has lived in the United States her entire life and has close ties to her mother, who also lives in the United States. The country conditions information in the record indicated that Malawi is among the world's most densely populated and least developed countries in the world, with 90% of its work force working in agriculture. The documentation indicates that medical facilities in Malawi were rudimentary and did not meet U.S. standards of medical care, with communication in English being difficult. In addition, the applicant's only close family member living in Malawi is his elderly mother. Thus, we found that given that the applicant's spouse's and children's length of residence in the United States, family ties in the United States, and conditions of extreme poverty in Malawi, they would suffer extreme hardship as a result of relocation.

However, we found that the record failed to show that the applicant would suffer extreme hardship upon separation. On appeal, the record showed that the applicant's spouse lived in a home owned by her mother and paid only for utilities. We also acknowledged that the record established that the applicant was employed fulltime earning \$24 per hour and that the applicant's spouse would lose this income upon separation, but without more documentation regarding the finances of the family and the applicant's spouse's ability to earn an income we could not find that this loss of income, on its own, would constitute extreme financial hardship. We noted that the record indicated that the applicant's spouse was employed as a dietary aide for four years when the initial waiver application was filed. We also noted that the applicant's spouse indicated that she previously suffered from anxiety and insomnia, but with the applicant in her life, these problems have stopped. Again, we found that without more details about the history of these problems, their severity, and the potential problems they could cause with the applicant's spouse's daily functioning we could not make a determination as to whether these issues amounted to extreme hardship.

On motion, we again find that the applicant has failed to establish that his wife and/or children would suffer extreme hardship as a result of separation. We recognize that the applicant is the sole income earner for the family and that they obtain health insurance through his employer, but the record fails to show that the applicant's spouse would be unable to find work and earn an income to support her family in the applicant's absence. The applicant's spouse states that she worked as recently as 2011, but no documentation was submitted to show how much she earned in this employment. Furthermore, the applicant's spouse states that her mother now lives in Arizona and is no longer a source of support, but provides no documentation, except for one check in the amount of \$500 made out to the applicant's spouse's mother, in support of these statements. The applicant's spouse has also failed to show that the emotional hardship she would suffer would be beyond what would normally be expected upon separation. In sum, the record continues to lack supporting documentation to substantiate the hardship claims made.

The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded [it] . . ."). Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

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(s) in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or children caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the motion is granted and the AAO's previous decision is affirmed.

ORDER: The motion is granted and the AAO's previous decision is affirmed.