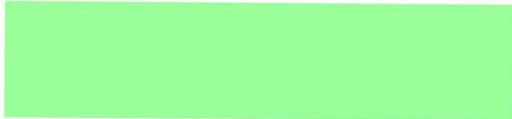




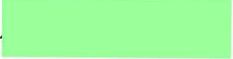
**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **SEP 13 2013**

Office: SAN BERNARDINO

FILE: 

IN RE: Applicant: 

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 "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Bernardino, California and an appeal was dismissed by the Administrative Appeals Office (AAO). A subsequent motion was granted and the decision of the AAO was affirmed. The matter is again before the AAO on motion. The motion will be granted and the previous AAO decisions are affirmed.

The applicant is a native and citizen of Mexico who was convicted in February 2008 of criminal possession of a forged instrument in the first degree under Oregon Revised Statutes § 165.022. The applicant was thus 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 does not contest this finding of inadmissibility on motion. 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 mother.

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 (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 7, 2010.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO*, dated September 11, 2012.

In October 2012, the applicant filed a motion to reconsider the AAO's decision. The motion was granted but the AAO's decision was affirmed as the AAO found that extreme hardship to a qualifying relative had not been established. *Decision of the AAO*, dated May 17, 2013.

With the instant motion, the applicant submits the following: a brief; biographical documentation pertaining to the applicant and his mother; a psychological evaluation in regards to the applicant's mother; and evidence of medications prescribed to the applicant's mother. The entire record was reviewed and considered in rendering this decision.

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 –

. . . .

(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. The applicant's U.S. citizen mother is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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. I.N.S.*, 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.

In the AAO’s decision to grant the motion and affirm its decision, the AAO noted that it had not been established that the spiritual and emotional hardships the applicant asserts his mother would experience were he to reside abroad while she remained in the United States were beyond the hardships normally associated with long-term separation from a son or daughter as a result of inadmissibility. As for the financial hardship referenced, the AAO stated that no documentation had been provided on motion establishing the applicant’s mother’s current financial situation, including income and expenses and assets and liabilities, and the applicant’s specific financial contributions to the household, to establish that the applicant’s absence specifically would cause his mother financial hardship. Alternatively, it had not been established that the applicant would be unable to obtain gainful employment in Mexico that would permit him to assist his mother financially should the need arise. Finally, with respect to the applicant’s mother’s medical conditions, although a letter had been provided from the applicant’s mother’s treating physician outlining that she had been diagnosed with numerous medical conditions, said letter did not establish what role the applicant specifically played in his mother’s daily care, to establish that his absence would cause her hardship. The AAO noted that the applicant had multiple siblings residing in the United States and it had not been established that they were unable to assist their mother, emotionally, spiritually, physically, medically and/or financially should the need arise. *Supra* at 4-5.

On motion, the applicant has submitted a psychological evaluation from [REDACTED], an associate clinical social worker. [REDACTED] diagnoses the applicant’s mother with the conditions labeled as Major Depressive Disorder, Recurrent and Severe with Psychotic Features and Generalized Anxiety Disorder directly connected to the potential separation with her son. [REDACTED] dated June 4, 2013. To begin, as noted by [REDACTED] the applicant’s mother has eight other children and currently resides with her daughter, [REDACTED]. As previously referenced by the AAO, it has not been established that the applicant’s siblings, most notably [REDACTED], are unable to assist their mother, emotionally, physically, medically and/or financially, should the

need arise. Further, as previously noted by the AAO, no supporting documentation has been provided regarding the applicant's mother's financial situation and her son's financial contributions to her daily living to support her assertion that she will experience financial hardship were the applicant to relocate abroad. Alternatively, no supporting documentation has been provided establishing that the applicant is unable to obtain gainful employment in Mexico. As for the copies of medications prescribed to the applicant's mother, the AAO notes that some prescriptions are not dated and the ones that are dated are from June 2012, approximately one year prior to the instant motion filing. As previously noted by the AAO, no documentation has been provided on motion from the applicant's mother's doctor outlining her current medical situation and what hardships she will experience were her son specifically to relocate abroad. It has thus not been established on motion that the applicant's mother will experience extreme hardship were she to remain in the United States while her son relocates abroad as a result of his inadmissibility.

With respect to relocating abroad to reside with the applicant as a result of his inadmissibility, the AAO found that extreme hardship to the applicant's mother had been established. *Supra* at 5. As such, this criterion will not be readdressed on motion.

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

On motion, the record does not support a finding that the applicant's mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or is refused admission. There is no documentation establishing that the applicant's mother's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's mother's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law.

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 will be granted and the previous AAO decisions are affirmed.