



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

(b)(6)

[REDACTED]

Date: **APR 02 2014** Office: NEWARK, NJ [REDACTED]

IN RE: [REDACTED]

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:

[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 Field Office Director, Newark, New Jersey, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. 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 record does not contain any documentary evidence of hardship and denied the application accordingly.

On appeal, counsel contends that the applicant is not inadmissible for a crime involving moral turpitude, but rather, for a violation of law relating to a controlled substance. Counsel claims the applicant was granted conditional discharge and that it is not entirely clear that he pled guilty to a controlled substance offense. Counsel alternatively contends that if the AAO determines there is a conviction, the applicant established extreme hardship to his wife, particularly considering her emotional and economic hardship.

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 April 7, 2008; two letters from the applicant; two letters from [REDACTED]; a psychological evaluation; copies of tax returns and other financial documents; a letter from the applicant's employer; a letter from Ms. [REDACTED]; employer; a letter of support; copies of a police report, court documents, and 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.

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 record shows that on January 20, 2001, the applicant, using the name [REDACTED] was arrested for driving while intoxicated after a motor vehicle accident. According to the police report, a brown hash pipe and three bags of marijuana were found in the applicant's pocket. A Certified Laboratory Report in the record indicates the amount of marijuana was 1.24 grams. The Complaint indicates the applicant was charged with possession of a controlled dangerous substance in violation of N.J.S. § 2C:35-10A(4) and possession of drug paraphernalia in violation of N.J.S. § 2C:36-2. According to a Disposition in the record that was certified by the Court Administrator on October 31, 2008, the applicant pled guilty to both offenses in the Municipal Court, Township of [REDACTED] on March 21, 2001. A separate Disposition in the record that was certified on June 7, 2013, indicates that there was "no plea" in the same court on March 21, 2001, and that the applicant was granted conditional discharge.

As an initial matter, the AAO agrees with counsel that the relevant section of the Act in this case is section 212(a)(2)(A)(i)(II) of the Act related to a violation of a controlled substance, and not section 212(a)(2)(A)(i)(I) of the Act for a crime involving moral turpitude. With respect to counsel's contention that it is not entirely clear that the applicant pled guilty because the more recent

Disposition indicates there was no plea and an FBI record and New Jersey automated complaint summary do not indicate that the applicant pled guilty, the Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, the record contains ample documentation showing the applicant did, in fact, plead guilty. As stated above, the record contains a Disposition that was certified on October 31, 2008, showing the applicant pled guilty on March 21, 2001. In addition, as the applicant himself concedes on his waiver application, “I was arrested on January 20, 2001 and pled guilty on March 21, 2001. . . .” Similarly, the applicant stated on the Continuation Sheet for his Form I-485:

Arrested on January 20, 2001, in [REDACTED] under NJ Statute 2C:35-10A(4) for possession of marijuana (under 50 grams) under the fictitious name of [REDACTED]. I pled guilty on March 21, 2001 and was granted conditional discharge after six months and paid fines totaling approximately \$800.00. All this was under the fictitious name of [REDACTED]. On March 10, 2010, my application to correct the name was denied.

The record also contains a copy of the Order denying the applicant’s request to “correct” his name, showing that the applicant was, in fact, convicted as charged. The Order states, in pertinent part:

This matter coming before the Court upon the application of Defendant . . . for a correction of the Defendant’s name as it appeared on a March 21, 2001 conviction under 2C:35-10A(4)[,] it is on this 10th day of March 2010 ordered that application of the Defendant [REDACTED] be denied. . . . Post conviction relief denied.

Therefore, the record establishes that the applicant pled guilty and was convicted as charged. The applicant has not attempted to explain or reconcile the inconsistencies between the two Dispositions and has not provided any independent, competent, and objective evidence pointing to where the truth lies. Accordingly, the applicant has not met his burden of proving he is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Because the applicant was convicted of a single offense of simple possession of 30 grams or less of marijuana, he 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-I-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 met her husband in 2002 and that every year, their lives get better. She states they are happy, enjoy the comfortable life they've made together, and find peace visiting family and vacationing in their timeshare. According to [REDACTED] she and her husband financially complement each other. They reportedly have two cars and a house, and are able to afford these things because they both work extremely hard at their full-time jobs. Ms. [REDACTED] contends she cannot imagine her life without her husband. She claims she was in a horrible previous marriage that included mental and physical abuse, and states she does not want to go back into a depression if her husband departs the United States. She also contends her husband has a great relationship with her kids and grandkids, and that they will also be sad if he were not around.

After a careful review of the record, there is insufficient evidence to show that the applicant's wife, [REDACTED], will suffer extreme hardship if the applicant's waiver application were denied. Significantly, [REDACTED] does not discuss the possibility of relocating to Mexico to avoid the hardship of separation and she does not address whether such a move would cause her extreme hardship. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the AAO is sympathetic to the couple's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). To the extent the record contains a letter from a social worker, the letter does not diagnose [REDACTED] with any mental health condition and describes the common, typical responses of being separated from a spouse. Regarding financial hardship, although the record contains a copy of a deed, there is no current evidence addressing the couple's income and regular, monthly expenses, such as rent or mortgage. The only employment and tax information in the record dates back to 2009. Therefore, there is insufficient evidence to evaluate the extent of financial hardship [REDACTED] may experience. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's wife will experience amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 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 appeal is dismissed.