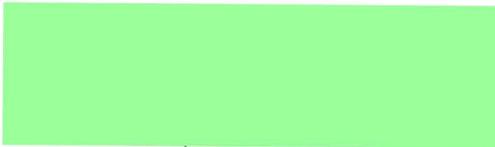


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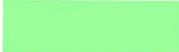


U.S. Citizenship
and Immigration
Services



DATE: **APR 30 2014**

Office: CHICAGO

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)

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

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, accordingly, denied the Application for Waiver of Grounds of Inadmissibility. In dismissing the applicant's appeal, the AAO concluded the record evidence did not show the requisite extreme hardship as a result of the applicant's inadmissibility. *Decision of the AAO*, October 3, 2013. On motion, the petitioner submits hardship evidence consisting of new and previously submitted documentation, including supportive statements, medical information, and photographs. The record includes, but is not limited to: hardship and supportive statements, medical records, biographical information, financial records, 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, stating, 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 ... is inadmissible.

On motion, the petitioner asserts the applicant is entitled to a waiver under section 212(h) of the Act because of the extreme hardships a qualifying relative will suffer due to her husband's inadmissibility for having committed a crime involving moral turpitude (CIMT).

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

The Attorney General [Secretary of Homeland Security] 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

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

On appeal, the AAO affirmed the field office director's finding that the applicant's April 8, 2009 conviction for retail theft was for a CIMT. Since the unlawful activities leading to inadmissibility under section 212(a)(2)(A) occurred within the past 15 years, the applicant must prove that the denial of his admission would cause 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. 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-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 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.

Regarding separation from her husband, the applicant's U.S. citizen spouse claims she will suffer extreme hardship as a result of the applicant's inadmissibility. The record shows that she married the applicant on October 13, 2006 in what was the second marriage for both. She states that she loves the applicant and would be lost without him. In support of the claim that the applicant's absence would cause her emotional hardship, she provides a letter from her adult son stating that

he is friends with his stepfather, has witnessed his stepfather caring for his mother, and observed the joy and companionship he brings to her life. The applicant's wife states that she suffers from many medical problems, including drop foot, and relies on the applicant to take her to medical appointments, cook, do household chores, and help her physically. Her treating physician states that he has provided care to the applicant's wife for many different conditions, including non-insulin dependent diabetes, degenerative joint disease, foot and ankle problems, and instability. He does not specify how or when the applicant's wife was treated for these conditions, explain their nature and severity, or offer a prognosis.

The record reflects that the applicant's wife is 74 years old and a patient data summary shows she has been treated at a local hospital periodically for multiple conditions during the past 30 years. While her doctor notes that the applicant accompanies her to medical visits and helps her at home, he does not specify the daily assistance her conditions require her to have. Copies of pharmacy receipts from October 2013 and a medical letter from February 2013 show she has been prescribed a number of medications, but fail to explain the conditions being treated. The record contains copies of medical records, including progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals and do not contain a clear explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed. Absent this information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. In this case, the evidence is insufficient to establish the assistance the qualifying relative requires from the applicant on a daily basis as a result of her conditions. While the qualifying relative's son states that he is presently unable to drive his mother to her medical appointments, there is no indication what other transportation resources are available.

There is no evidence that the applicant's wife will become unable to meet her financial obligations without her husband's economic support. The record indicates that the qualifying relative's son has claimed her as a dependent on his tax returns and also that the company he owns employs his stepfather. Evidence that the applicant's wife is retired from her occupation as an insurance agent fails to include information regarding her retirement resources, such as pension benefits or social security, although medical records refer to Medicare and Medicaid coverage and reimbursements. No documentation is provided of the applicant's current income, earnings history, or contribution to household income, or that he has ever filed a tax return. While the AAO recognizes the impact of separation on families, the evidence on record, when considered in the aggregate, does not indicate that the financial hardship due to separation from the applicant would be extreme.

For all these reasons, the applicant has not shown the cumulative effect of the emotional and financial hardships his wife will experience due to the applicant's inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

The applicant does not address what hardship his wife would experience by relocating to live with him, if he is unable to remain in the United States. Under section 291 of the Act, the applicant bears the burden of showing eligibility for the benefit sought. And, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO recognizes that the prospect of separation or involuntary relocation nearly always results in some hardship to individuals and families. In specifically limiting the availability of a waiver of inadmissibility to cases of extreme hardship, Congress provided for a waiver of inadmissibility only under limited circumstances. 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 hardship that is extreme. As the AAO finds that the applicant has failed to establish extreme hardship to his qualifying relative under section 212(h) of the Act, no purpose would be served in determining 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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO dismissing the appeal is affirmed.