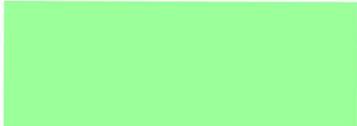




U.S. Citizenship
and Immigration
Services

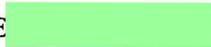
(b)(6)



Date: AUG 26 2014

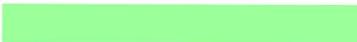
Office: QUEENS FIELD OFFICE

FILE



IN RE:

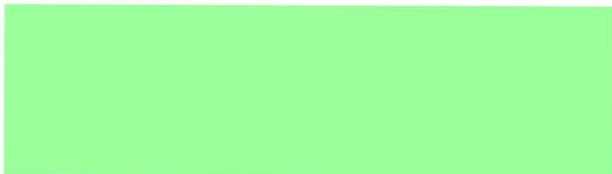
Applicant:



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:



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, Queens, New York, 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 Jamaica who was found 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 seeks 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.

The field office director found that the applicant failed to establish that a qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated December 13, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the field office director erred in failing to find extreme hardship to the applicant's spouse and failed to consider all the evidence. With the appeal counsel submits a brief, a letter from the applicant's employer, and country information for Jamaica. The record also contains statements from the applicant and his spouse, a psychological assessment of the spouse, and previously-submitted country information for Jamaica along with financial documentation and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was

convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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 reflects that on [REDACTED] 2011, the applicant was convicted of Criminal Conspiracy Engaging in the Court of Common Pleas of [REDACTED] County for the Commonwealth of Pennsylvania. The record reflects that the applicant was convicted for actions that took place on January 8, 2011, involving the use of counterfeit credit cards issued to other persons. The applicant was sentenced to time served, totaling 57 days, and two years of probation. The applicant's conviction, a third degree felony, carried a sentence of up to seven years.

At the time of the applicant's conviction, the Pennsylvania Code stated:

Title 18 - CRIMES AND OFFENSES

Chapter 9 - Inchoate Crimes

§ 903. Criminal conspiracy.

(a) Definition of conspiracy.--A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

- (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime;

§ 923. Classification of offenses and penalties.

(a) General rule.--The following penalties shall be imposed for violations of this title:

- (8) For a felony of the third degree, a fine of not less

than \$2,500 nor exceeding \$15,000, or imprisonment not exceeding seven years, or both.

As counsel has not disputed on appeal that the applicant's conviction is a crime involving moral turpitude nor presented evidence that it is not, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the field office director.

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

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...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 established to the satisfaction of the [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...

(2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as [she] 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.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse and child.

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. *Salcido-Salcido v. INS*, 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 counsel states that as a child the applicant's spouse suffered verbal and physical abuse from her mother and lacked love from her father. Counsel states that the applicant's spouse was forced to work at a young age to provide food for herself and her younger sisters, and that her grandmother nurtured the granddaughters. Counsel asserts that the spouse's previous relationships ended because of abuse, and that after a life of being abused, the applicant's spouse has finally found a loving husband, so separation would be devastating.

The applicant's spouse states that the applicant is a wonderful husband and a big change from the previous men she dated that were verbally abusive. She states that her father was never involved with her and her mother provided shelter, but nothing else as she was physically and verbally abusive and uninterested in her children. The applicant's spouse states that as a child she worked for money to buy food and spent time with her grandmother who provided the love that her mother did not. The spouse states that she could not survive without the applicant as he is emotionally strengthening and supportive of her studies. She states that he also provides financially to maintain an apartment because from her job she does not earn much.

The applicant states that his spouse and her mother rarely see each other and that the mother had put men first to detriment of her own children, whom she physically and emotionally abused. The applicant states that his spouse would be devastated if he must go back to Jamaica as she works and goes to school, but does not earn enough to support herself. The applicant states that he is the first strong male in his spouse's life who has been good to her and that she relies on him for everything.

A psychological evaluation of the applicant's spouse states that she reports needing the applicant's help in every way. It states that the spouse reports that she cannot imagine exposing herself to the hunger, severe poverty, and feeling of desperation that she had as a child, and that without the applicant she fears she may end up in a similar situation and not likely to have a good life. The evaluation states that the spouse is financially dependent on the applicant and suggests that since the spouse had an upbringing characterized by helplessness, it is only through the love and support of the applicant that she is able to be strong and cope on an emotional level. The evaluation states that the spouse has overwhelming anxiety and shows symptoms of depression, anxiety, lack of motivation, and lethargy; has difficulty accomplishing everyday tasks; and is psychologically vulnerable.

The report provided, however, does not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. We recognize that given the difficult upbringing of the applicant's spouse she will endure some hardship as a result of long-term separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. Nor has it been established that the applicant's spouse would be unable to travel to Jamaica to visit the applicant.

Counsel, the applicant, and the applicant's spouse also contend that the spouse is financially dependent on the applicant. Financial documentation submitted in conjunction with the applicant's Form I-485 provide the spouse's income and tax information and an apartment lease agreement, but not her assets, liabilities, overall financial situation, or the applicant's contribution. A letter from the applicant's employer confirming his employment does not provide salary or benefit information. Without additional evidence we are unable to assess the nature and extent of any financial hardship to the applicant's spouse to establish that without the applicant's physical presence in the United States his spouse will experience financial hardship.

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Jamaica to reside with the applicant. Counsel states that the applicant's spouse cannot relocate to Jamaica because of being separated from her two younger sisters, for whom she was de facto mother, and from her grandmother who helped raise her. Counsel also asserts that Jamaica has a terrible crime rate and economy and that medical care is not comparable to the United States.

The applicant's spouse states that she has read about poverty and crime in Jamaica, so she does not want to live there. The applicant states that his spouse would be unable to find employment in Jamaica and that health care is bad compared to the United States. He also states that he and his spouse want to have a family but do not want children to grow up in Jamaica with its widespread poverty and violence.

The psychological evaluation states that the applicant's spouse finds it unfathomable to imagine moving to Jamaica as she would be giving up her job and contact with her family and the opportunity to feel safe. The evaluation also states that the spouse believes she could not find adequate employment there as she would be dropping out of college before obtaining necessary qualifications.

Country information submitted to the record provide generalized conditions of crime and economic conditions along with some specific instances of criminal acts, but the record does not indicate how they specifically affect the applicant's spouse or where she would reside. The submitted country conditions information fails to establish that the applicant's spouse would be at risk as a result of harm. The spouse fears being unable to find employment in Jamaica and thus suffering poverty. However the record does not establish that the spouse would be unable to find employment. Further, the record reflects that the applicant had been gainfully employed in Jamaica, operated his own business, was able to make multiple visits to the United States since 1989, and received family support while in the United States. Thus it has not been established that he would be unable to support his spouse in Jamaica. The record also does not establish that, if residing in Jamaica, the applicant's spouse would be unable to visit her sisters and grandmother in the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse 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 spouse is removed from the United States. Although we are not insensitive to the spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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.