U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 0 2 2014 Office: OAKLAND PARK, FL 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:

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,

Michael Shumway

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida, The field office director's decision was appealed to the Administrative Appeals Office (AAO) and the appeal was dismissed. The applicant then filed a motion, which was dismissed by the AAO. The matter is now before the AAO on a second motion. The motion will be granted and the prior decision of the AAO affirmed.

The applicant is a native of Jamaica and a citizen of Jamaica and Canada 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 crimes involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). In a decision, dated April 9, 2009, the field office director concluded that the applicant had failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel declared that the applicant's husband was suicidal and had undergone treatment for depression that was related to the applicant's wife's inadmissibility to the United States. Counsel also stated that the applicant's husband's mother died from cancer two years ago and that his nephew was murdered. Counsel maintained that the applicant's husband would experience extreme hardship if the waiver was denied.

In our decision, dated February 27, 2012, we found that the applicant had failed to demonstrate that her husband would experience extreme hardship if he remained in the United States without her. Additionally, the applicant had not submitted evidence to demonstrate that her husband would experience extreme hardship if he joined her to live in Canada and if he relocated to Jamaica.

On motion, counsel submitted new evidence to address the issues cited by the AAO in its decision and to show the applicant's spouse was rehabilitated. The new evidence submitted on motion included: a brief, two affidavits from the applicant's spouse, one statement from the applicant, and four letters attesting to the applicant's rehabilitation.

In our decision, dated August 28, 2013, we found that the applicant's spouse had established that he would suffer extreme hardship upon separation from the applicant because of severe mental health issues and lack of any other familial support. However, the waiver application was denied because we also found that the applicant had not submitted evidence to demonstrate that her husband would experience extreme hardship if he joined her to live in Canada and if he joined her to live in Jamaica.

In the current motion, counsel submits new evidence of the applicant's spouse's criminal record in the United States and asserts that the applicant's spouse will not be able to relocate because of his serious criminal background. Counsel submits a brief, criminal records for the applicant's spouse, documentation regarding the immigration laws of Canada and Jamaica, and a sworn statement from the applicant's spouse.

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.

The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of a conviction in 2002 in Canada for fraud over $5,000 and convictions in 2005, in Florida, for unauthorized possession of identification card/driver's license, uttering a forged instrument, and resisting without violence. The applicant did not disputed this finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on appeal or on motion. Thus, we will not discuss this finding further.

A waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Section 212(h) of the Act provides, in pertinent part:

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> (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.

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) and (II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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.

We will not disturb the previous finding that the applicant's spouse will suffer extreme hardship as a result of being separated from the applicant. This decision will focus on whether the applicant has established extreme hardship to her spouse as a result of relocating to Canada and Jamaica.

The record indicates that the applicant's spouse has a serious criminal record including convictions for trafficking in heroin in 2003 and possession of drugs without a prescription in 2010. His record also includes numerous arrests. His most recent arrest was in 2011 for Aggravated Assault with a Deadly Weapon. The charges for this arrest were dropped.

Counsel asserts that the applicant's spouse would not be able to relocate to Jamaica or Canada because of his criminal record, thus resulting in separation from the applicant. In support of this assertion, he includes documentation on Canadian and Jamaican immigration laws. The applicant's criminal record will undoubtedly complicate relocation abroad, but the documentation provided does not show conclusively that it would be impossible. For example, the documentation indicates that Canadian law provides for a rehabilitation waiver. The record does not indicate that the applicant and/or the applicant's spouse have made any attempts to obtain legal status in or permission to travel to either of these countries.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes

of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). We acknowledge counsel's arguments that the applicant's spouse does not have the choice of relocation in this case, but the record contains insufficient substantiation of this claim to meet the applicant's burden. As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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 rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, although the motion has been granted and the new evidence considered, the prior decision of the AAO is affirmed.

ORDER: The prior decision of the AAO is affirmed.