

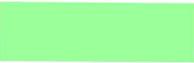
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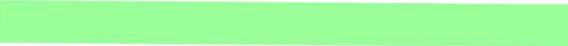


U.S. Citizenship  
and Immigration  
Services



Date: **JUL 18 2014** Office: TAMPA

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tampa, Florida, 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 Uruguay who was found inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of Possession of Marijuana, under 20 grams. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his lawful permanent resident spouse and his U.S. citizen children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Amended Decision of the Field Office Director*, dated January 7, 2014.

On appeal, counsel contends that the evidence provided with the Form I-601 establishes that the applicant's spouse and children would suffer extreme hardship if the waiver application is not approved. Counsel also submits evidence that the applicant's spouse and her two children receive food stamps.

The record includes, but is not limited to: briefs by applicant's counsel in support Form I-290B, Notice of Appeal or Motion; letters from the applicant's current spouse, former spouse, and son; financial documentation; and the applicant's criminal records. 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 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.

In this case, the field office director found, and counsel concedes, that in August 2011, the applicant was convicted of possession of marijuana of not more than 20 grams in violation of Florida Statutes § 893.13(6B). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The applicant is eligible to apply for a waiver under section 212(h)(1)(B) of the Act.

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 ....

As the applicant was convicted of a single offense of simple possession of 30 grams or less of marijuana, the applicant is eligible to apply for a waiver under section 212(h)(1)(B) of the Act. Section 212(h) of the Act provides that a waiver of inadmissibility 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. The applicant has five qualifying relatives: his lawful permanent resident spouse and four U.S. citizen children. If extreme hardship is established to one of his qualifying relatives, the Secretary then assesses whether an exercise of discretion is warranted.

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.

Counsel contends that the applicant's qualifying relatives, his lawful permanent resident spouse, his U.S. citizen child with his current spouse, two U.S. citizen children with his former spouse, and his U.S. citizen step-daughter, would all suffer extreme hardship above and beyond economic hardship if the applicant's waiver application is not approved. In support of this contention, the applicant submits a statement from his current spouse, in which she states that the applicant has supported her and her two children. She states that she does not speak English and he goes to meetings at the school of his step-daughter and helps her with her homework. She further states that the applicant has never abandoned her and her daughter, that he is concerned about his children's education, and that he helps get medicine when the children are sick.

The applicant further submits a statement from his former spouse, stating that the applicant is responsible for the maintenance of his two children with her and that his help is essential to the needs of his children. She states that her job does not pay a lot and that she needs the applicant's assistance to buy food, clothes, shoes, and other necessities and to take care of their school needs. The record further includes a letter from the applicant's son with his ex-wife, who states that he needs the applicant in order to have a better life in the United States.

With respect to financial hardship, the only evidence in the record are documents regarding the eligibility of the applicant's spouse and two children for food stamps and a bank statement with a letter dated July 31, 2012, indicating that the applicant's bank account was overdrawn. According to counsel, the applicant's spouse and two children did receive food stamps until May 2012; however, when the applicant received his employment authorization, they were no longer eligible for food stamps.

No further evidence regarding the financial situation of the applicant's spouse has been presented. Although her assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). The evidence submitted is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

Counsel contends that the familial separation would result in emotional hardship to the applicant's son from his previous marriage. However, no evidence was submitted to support this assertion. 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)). We recognize that the applicant's spouse and children will endure hardship due to the loss of the applicant's support if they are separated from him. However, their situation, if they remain 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 evidence in the record, considered in its cumulative effect.

Regarding the hardship the applicant's spouse would experience if she were to relocate with the applicant, counsel contends that she will lose her lawful permanent resident status if she relocates to Uruguay, as an absence of six months to 354 days may raise a presumption of an intent to abandon residency. Counsel further contends that the applicant's spouse will face substantial obstacles in obtaining any form of meaningful employment; however, there is no evidence in the record to support this contention.

While counsel asserts that it would be difficult to find employment in Uruguay, counsel has not established that the applicant would be unable to support his spouse and children were they to

relocate to Uruguay. Further, while the record indicates that applicant's parents reside in Uruguay, he does not address the nature and extent of his family ties there. Based on the evidence on the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Uruguay to reside with him.

The possibility of the applicant's children relocating to Uruguay has not been addressed in the record. As the record contains no assertions of hardship related to relocation of the children, we cannot speculate in this regard. Accordingly, we find the evidence insufficient to demonstrate that any of the applicant's children would suffer extreme hardship were they to relocate to Uruguay to be with the applicant. Based on the evidence in the record, the applicant has not established that his children would suffer hardship beyond the common results of removal if they were to relocate to Uruguay to reside with the applicant.

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 spouse or children will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate but expected difficulties arising whenever a loved one is removed from the United States. Although we are not insensitive to the situation of the applicant's spouse and children, the record does not establish that the hardship they face rises to the level of extreme, as contemplated by statute and case law. Moreover, as the applicant has not established extreme hardship to a qualifying family member, 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.

**ORDER:** The appeal is dismissed.