

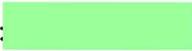


**U.S. Citizenship  
and Immigration  
Services**

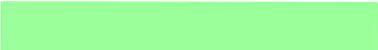
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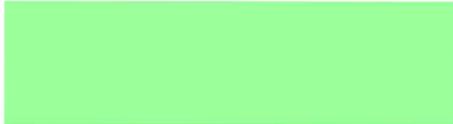
FILE: 

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 that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Acting District Director, Philadelphia, Pennsylvania, and 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 to be inadmissible to the United States pursuant to 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) (2012), for having been convicted of one or more crimes involving moral turpitude. The applicant is the spouse and child of United States citizens and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her United States citizen spouse and mother.

The Acting District Director concluded the applicant did not demonstrate that a qualifying relative would experience extreme hardship given her inadmissibility and denied the application accordingly. *See Decision of Acting District Director* dated December 6, 2013.

On appeal, the applicant submits: a brief in support; her own statement; letters from her qualifying relatives; other letters from family, friends, and community members; psychological evaluations; medical records; letters from physicians; documentation of her father's death; and articles on country conditions in Jamaica. In the brief, counsel contends the applicant has submitted sufficient evidence to demonstrate that both her mother and her spouse would experience extreme hardship if they were separated from the applicant and in the event they had to relocate to Jamaica with her.

The record includes, but is not limited to: the documents listed above; evidence of birth, marriage, residence, and citizenship; documentation of criminal and immigration proceedings; medical and financial records; and other applications and petitions. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO will first address the finding of inadmissibility. Section 212(a)(2) of the Act provides, in pertinent part, that:

(A) (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

- (I) 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 establishes that on March 24, 2006, the applicant was convicted of Retail Theft, in violation of section 3929(a)(1) of the Pennsylvania Criminal Code. The applicant was ordered to complete 6 months of probation. The applicant was later convicted of a separate charge of Retail Theft, in violation of section 3929(a)(3) of the Pennsylvania Criminal Code, on May 24, 2007. She was sentenced to 2 years of probation.<sup>1</sup>

Pennsylvania Criminal Code § 3929 states, in pertinent part:

(a) Offense defined.—A person is guilty of a retail theft if he:

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<sup>1</sup> The record also reflects that the applicant was first charged with violating section 3929(a)(1) of the Pennsylvania Criminal Code in 2002. The applicant pled guilty to this charge, and was ordered to pay a \$200 fine and \$116 in court costs. Subsequently, the applicant was charged with violating the same statute in on October 24, 2005, but as she entered a diversion program, the record does not reflect a conviction related to this specific charge.

(1) takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof;

....

(3) transfers any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment from the container in or on which the same shall be displayed to any other container with intent to deprive the merchant of all or some part of the full retail value thereof...

Theft has long been held to be a CIMT. *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966). The Board of Immigration Appeals (BIA) has held that, in order to constitute a CIMT, a conviction for theft must involve a permanent taking. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). In *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the BIA found that a violation of Pennsylvania's retail theft statute reasonably allowed for the presumption that the conduct involved an intent to permanently deprive the owner of their property. The record of conviction in the applicant's case makes clear that the applicant's convictions involved violations of Pennsylvania Criminal Code §§ 3929(a)(1) and (3), which both involve the intent to permanently deprive. Therefore, we affirm the Acting District Director's finding that the applicant's three convictions for retail theft constitute CIMTs. The applicant does not contest the finding of inadmissibility on appeal. The applicant's qualifying relatives for a waiver of inadmissibility are her United States citizen spouse and mother.

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative. Under section 212(h), qualifying relatives include U.S. citizen or lawful permanent resident spouses, parents, sons and daughters. Hardship to the applicant is considered only to the extent it results in hardship to the qualifying relative. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 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.

The applicant's mother claims she will experience medical, financial, and emotional hardship upon separation from the applicant. The mother's physician indicates in a letter that she has been under his care for metastatic follicular thyroid cancer and post-surgical hypothyroidism since

2008. Medical records are submitted in support. The mother states that she is a past cancer patient, and she worries about the possibility of a relapse. She claims she has other health problems, such as shoulder issues, high blood pressure, and acute acid reflux. The applicant's mother adds that the applicant helped her significantly when she was undergoing cancer treatments, and that the applicant also assists her financially because the mother cannot afford the mortgage payments on her own. A licensed clinical psychologist indicates in a psychological evaluation that the applicant was involved in caretaking responsibilities when her mother was being treated for cancer, and although the doctors consider her to be recovered, she continues to go to check-ups and take medications. The psychologist also indicates that the applicant's mother has endured several losses of close family members and friends recently, including the death of the applicant's father in December 2010 and her own sister in 2004. A program from the father's funeral service is submitted on appeal. The psychologist concludes that the mother is dependent on the applicant for emotional support, and consequently, the mother experiences increased anxiety, worry about her daughter and her future grandchild, and as well as some short-term memory issues.

Counsel contends in the brief that the applicant's mother would also experience extreme hardship upon relocation to Jamaica. Counsel cites to the lack of medical facilities, removal from the mother's community, the high crime rate, and other adverse country conditions as negative factors. Counsel also states that the applicant's mother is unlikely to find work in Jamaica due to her age. United States Department of State Human Rights Reports and articles on country conditions in Jamaica are submitted on appeal.

Counsel's contention that the applicant's mother currently experiences active cancer, not in remission, is not supported by the documentation submitted. The record reflects that the applicant's mother was treated for thyroid cancer in 2008, and that she still has some medical conditions, such as high blood pressure and acid reflux. However, evidence of record, including the mother's statements in the psychological evaluation, indicates that the mother has recovered from the cancer. There is no documentation, such as an explanation from the mother's treating physician, demonstrating that the applicant's mother currently suffers from serious medical conditions which would require the applicant's assistance.<sup>2</sup> Absent an 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, the AAO is not in the position to reach conclusions concerning the severity of a current medical condition or the treatment needed, or the nature and extent of any medical-related hardship the applicant's mother would presently suffer as a result of the applicant's inadmissibility.

The applicant's mother states that the applicant and her husband help her with her mortgage payments, and consequently she would experience financial distress without the applicant present in the United States with her present employment. However, the applicant did not submit

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<sup>2</sup> In addition, the applicant does not assert that her mother's full-time job as a clinical nurse assistant has been affected by any current health issues.

evidence of her current income, nor does she present documentation to corroborate assertions on this matter. Without this evidence, we cannot evaluate the degree of financial difficulties the applicant's mother would experience if the applicant were unable to work in the United States as a result of returning to Jamaica.

The record reflects that the applicant's mother would experience emotional hardship upon separation from the applicant, given that they have a close relationship and that she has experienced emotional strain due to the deaths of other family members and friends. While the AAO acknowledges that the applicant's parent would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record does not contain sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's mother are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Jamaica without her.

Assertions on extreme hardship upon relocation to Jamaica are similarly unsupported by evidence of record. As stated above, the applicant has not provided an explanation from the mother's treating physician indicating she presently suffers from a serious medical condition, and consequently, the applicant has not demonstrated that treatment for such a medical condition would be unavailable or difficult to access in Jamaica. In addition, although the applicant submits documentation on criminal activity in Jamaica, as well as copies of U.S. Department of State human rights reports, there is no explanation or documentation to demonstrate that the applicant's mother would be targeted for violence or subject to such criminal activity. Lastly, the applicant submits no evidence to support assertions that her mother, a clinical nurse assistant, would have difficulty finding employment in Jamaica due to her age. Although these 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."). 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Therefore, we conclude that the applicant has submitted insufficient evidence to demonstrate her mother would experience extreme hardship upon relocation to Jamaica, and in the event of separation from the applicant.

The applicant's spouse claims he will experience emotional and financial hardship in the event that the applicant returns to Jamaica without him. He explains in a letter that the applicant's current immigration situation has caused him to worry, have sleepless nights, and that he will be an emotional wreck without her. The spouse adds that the applicant has had miscarriages in the past, and he hopes that this time the applicant will give birth to a healthy baby. He contends that he would want to have the applicant and their baby remain in the United States so they can be a family and live under one roof. The applicant's physician states in a letter that the applicant previously miscarried in her first trimester in April 2013, and that she is due to give birth in July 2014. The applicant also submits a psychological evaluation in support. Therein, a licensed clinical psychologist relates that the spouse was born and raised in Nigeria, that they married in 2010 but they started dating in early 2007, and that the spouse is closest with the applicant. The psychologist opines that the spouse is exhibiting distress related to the applicant's immigration situation, and is anxious and sad due to the possibility of his family being separated. The psychologist concludes that the spouse is struggling with sadness and fear. The applicant's spouse also claims that he and the applicant split their household expenses equally between them, and that without her financial contributions he cannot maintain their present lifestyle.

The applicant asserts her spouse would have extreme difficulties relocating to Jamaica. The spouse explains he has never been to Jamaica, as he was born and raised in Nigeria. In addition, the spouse expresses worry about his own and his family's safety and well-being in Jamaica, given the dangerous country conditions. He concludes that there are better schools, hospitals, and opportunities for their child in the United States. Counsel adds that because the unemployment rate in Jamaica is high, the applicant's spouse would have difficulties finding employment there, and that the high crime rate would make it dangerous for the spouse and his family to live there.

As with claims that the applicant's mother would experience financial hardship without the applicant present, the applicant has submitted insufficient documentation of her income to corroborate claims that she contributes to her household financially. Nor has the applicant submitted evidence on her spouse's household expenses and other bills to demonstrate that he would be unable to meet his financial obligations without her present. Without details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

We acknowledge that the applicant's spouse would experience emotional and family-related difficulties upon separation from the applicant. However, the applicant has not submitted sufficient evidence to demonstrate that her spouse's hardship rises above the difficulties usually created when families separate as a result of inadmissibility or removal. Therefore, as we find the applicant has not established that the financial, emotional, family-related, or other difficulties are in the aggregate above and beyond hardships normally experienced, we cannot conclude the applicant has met her burden of proof in demonstrating that her spouse would experience extreme hardship if she returned to Jamaica without him.

In addition, the applicant has not submitted sufficient evidence to establish that her spouse would experience extreme hardship upon relocation to Jamaica. As with the applicant's mother, there is

no evidence demonstrating that the applicant's spouse would be unable to find adequate employment in Jamaica, or that he specifically would be targeted for criminal activity or other violence. Moreover, the applicant has not provided documentation to show that the schools, medical care, and other opportunities in Jamaica would cause him to experience difficulties which are above and beyond those normally experienced by family members who relocate as a result of inadmissibility.

The applicant has shown that her spouse, a native of Nigeria, is not familiar with Jamaica, has ties in the United States, and would have some adjustment issues upon relocation. However, we do not find evidence of record to show that his difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, safety-related or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Jamaica.

In this case, the record does not contain sufficient evidence to show that the hardships faced by either qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse or mother as required under section 212(h) of the Act. 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.