



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE:

JUL 28 2014

Office: PORTLAND

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Portland, Oregon, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who claims to have entered the United States in 1990 without inspection or parole and who was later 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 is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her parents and children.

The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of Field Office Director*, May 28, 2013.

On appeal, counsel submits hardship evidence regarding five qualifying relatives, contending that it establishes that a qualifying relative will suffer extreme hardship as a result of the applicant's inadmissibility if she is unable to reside in the United States. This evidence consists of new and previously submitted documentation, including hardship and supportive statements, medical information and a psychological evaluation, prior benefits applications, criminal and immigration history, and photographs. The record also includes: a waiver application and supporting brief; school and medical records; birth, marriage, and naturalization certificates; a green card; and country condition information. The entire record was reviewed and considered in rendering this decision.

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.

(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).

Although not disputing the applicant's inadmissibility for having committed a crime involving moral turpitude (CIMT), counsel 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 if the applicant is unable to remain in the United States.

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 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.

The record reflects the applicant's following criminal convictions between 1994 and 2010: Shoplifting, convicted July 19, 1994, [REDACTED] ID; Shoplifting, convicted June 8, 2000, [REDACTED] County, OR; Shoplifting, convicted May 15, 2001, [REDACTED] County, OR; Misdemeanor Theft, convicted February 21, 2002, [REDACTED] County, OR; Misdemeanor Theft, convicted December 4, 2003, [REDACTED], OR; Shoplifting, convicted January 27, 2004, [REDACTED] County, OR; First Degree Theft and Unlawfully Obtaining Food Stamps, convicted June 10, 2010 [REDACTED] County, OR. The applicant does not contest the determination that she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

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, 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 U.S. citizen father and three U.S. citizen children, as well as her lawful permanent resident mother, are qualifying relatives 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-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 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 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.

The applicant claims that, as a result of separation from her five qualifying relatives, one or more of them will suffer extreme hardship due to the applicant’s inadmissibility. The record demonstrates that the applicant’s absence would impose on a qualifying relative hardship that rises beyond the common or typical result of inadmissibility or removal to the level of “extreme.” Of her three children who are qualifying relatives, two are eight- and 13-year-old minors, and one is a 22-year-old adult. In support of the claim that the applicant’s absence would cause them emotional hardship, she provides letters from her now adult son and teenage daughter in which they express worries about moving to Mexico and describe their emotional attachment to their mother. The record reflects that the adult son was diagnosed with bipolar disorder and schizophrenia, for which he has been taking medication on and off since 2008. He states that he was hospitalized for suicidal and homicidal ideation, and without his mother in the United States to care for him and help him with his treatment, he fears his illness will get worse. Medical records indicate that the applicant has accompanied her son to the emergency room and medical visits, this qualifying relative lives with the applicant, and he believes his mother’s departure would make it more difficult for him to maintain his psychiatric illness in “clinically stable” condition. *See Emergency Department Notes*, November 19, 2008 and September 20, 2010, and *Progress Note*, May 6, 2011. Medical notes further reflect that, since first diagnosed with psychosis as a 17-year-old and going on medication, this son has begun exercising and watching

his diet, curbed his marijuana use, and taken greater responsibility for his health. Evidence of the applicant's bond with her son and the fact that he has not yet lived outside her household, coupled with his documented psychosis, are sufficient to show that his mother's departure would remove one of the stabilizing influences in his life.

There is no evidence that the applicant's departure will cause either her parents or her adult son to become unable to meet their financial obligations. Despite support letters indicating that the applicant has a work history, there is no documentation of her income and expenses showing she is able to help support her qualifying relatives. Despite the lack of evidence of adverse financial impact from the applicant's departure, the seriousness of her son's documented mental illness brings the cumulative effect of the hardships he will likely experience due to the applicant's inadmissibility to the level of extreme. We conclude based on the evidence provided that, were the applicant's adult son to remain in the United States without the applicant due to her inadmissibility, he would suffer hardship beyond those problems normally associated with family separation.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the record reflects that the cumulative effect of problems that her son would experience represents hardship that rises to the level of "extreme." The applicant's son states that he and his siblings' lives would be miserable if they had to go to Mexico and they would miss their only real home in Oregon and would be unfamiliar with the language and customs there. He further states that he would be unlikely to continue his psychiatric treatment because they would not be able to afford it without insurance. The U.S. Department of State (DOS) reports that quality medical care is available in large cities in Mexico, but notes that care is expensive and medication often hard to obtain. *Country Condition Information—Mexico*, DOS, May 27, 2014. Based on the totality of the circumstances, we conclude that due to the applicant's son's lack of ties to Mexico, his documented psychiatric conditions, and the potential interruption in his ongoing treatment, the evidence is sufficient to establish that he would experience extreme hardship by moving to Mexico and severing his ties with his community and extended family members living in the United States.

The documentation on record, when considered in its totality, reflects the applicant has established that a qualifying relative would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957):

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this

country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factor in this matter is the extreme hardship one or more of the applicant's qualifying relatives will face if the applicant lives in Mexico, regardless of whether they join the applicant there or remains here. The unfavorable factors in this matter concern the applicant's disregard of U.S. law and procedure throughout her more than 24 years here: she entered unlawfully, within four years was convicted in Idaho of her first crime, and during the next decade had at least five more criminal convictions in Oregon. Her convictions until 2010 were for shoplifting and misdemeanor theft offenses, but in that year she was arrested within weeks of filing for permanent residence for a felony theft offense and unlawfully obtaining food stamps and was ultimately convicted of both these offenses. Although she claims to have been gainfully employed, job letters in the record are not on official "letterhead" stationery and/or are undated, and there is no evidence she ever reported her income or paid income taxes.

Due to the applicant's violations of the immigration laws and extensive criminal history as well as lack of evidence of rehabilitation, the negative factors in this case outweigh the positive factors. Given the negative equities involved, particularly the applicant's numerous criminal convictions, we find that a favorable exercise of discretion is not warranted in this case.

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.