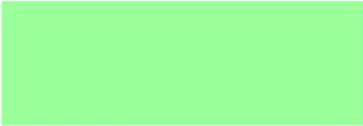




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JUN 18 2014** Office: CHICAGO 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  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Chicago, Illinois, 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 Poland 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 crimes 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 and child.

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

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the field office director erred in finding the applicant's qualifying relatives would not suffer extreme hardship by failing to consider factors cumulatively. Counsel asserts that the field office director failed to consider elements of hardship in the aggregate, particularly the spouse's health and financial dependence on the applicant. With the appeal counsel submits a brief, statements from the applicant and his spouse, financial documentation, information for Poland and the European Union, a letter of support from the spouse's sister, and documentation of the spouse's relatives in the United States. The record also contains a mental health assessment for the applicant's spouse and son, medical documentation for the spouse, school information for the applicant's son, and criminal conviction documentation for the applicant along with 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] 1997, the applicant was convicted in Circuit Court of Cook County, Illinois, for Retail Theft in violation of Illinois Criminal Statute (ILCS) Chapter 720 §5/16A-3(A), and sentenced to six months supervised release and community service.

According to 720 ILCS 5/16A-3(A):

A person commits the offense of retail theft when he or she knowingly:

(a) Takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise;

The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. See *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). In *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board of Immigration Appeals found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. Thus, the

record shows that the applicant's conviction for Retail Theft under 720 ILCS 5/16A-3(A) constitutes a crime involving moral turpitude.

The record also reflects that on [REDACTED] 2009, the applicant was convicted in Circuit Court of Cook County of Theft, a violation of Chapter 720 § 5/16-1-A-1 and sentenced to four months court supervision.

According to 720 ILCS 5/16-1:

Sec. 16-1. Theft.

(a) A person commits theft when he or she knowingly:

(1) Obtains or exerts unauthorized control over property of the owner;

Violation of 720 ILCS 5/16(a)(1), is a Class A misdemeanor when the theft of property is not from the person and does not exceed \$300 in value. *See* 720 ILCS 5/16(b)(1). In the present case a record of conviction has not been submitted to the record, but rather only a Certified Statement of Conviction/Disposition.

In *People v. Harden*, 42 Ill.2d 301, 303 (1969), the Supreme Court of Illinois stated that theft is committed when a person knowingly obtains or exerts unauthorized control over property of the owner, and intends to deprive the owner permanently of the use or benefit of the property. Accordingly, a conviction for theft under 720 ILCS 5/16(a)(1), which requires the intent to permanently take another person's property, involves moral turpitude, rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

As counsel has not disputed on appeal that the applicant's convictions are crimes involving moral turpitude nor presented evidence that they are 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.

The applicant's spouse states that since they married she and the applicant have not spent a day apart and that her son has never spent more than one night away from his father, the applicant, so it would be impossible to continue emotionally without him. A mental health assessment states that the spouse reports feeling depressed about the applicant's situation and sad over the possibility of her son not having his father around. The assessment states that the spouse would be devastated staying in the United States without the applicant but does not want her son to grow up without his father. The assessment finds the son to be in the normal range of anxiety, and refers to him as serious about studying and proud of his school work. It further states that the applicant's son enjoys his father's presence, but concludes that the son does not think of his father departing as reality. The assessment surmises that without his father the son could be susceptible to bad influences, and that the son looks to his father to resolve problems and guide him in life. It is recognized that the applicant's spouse and son will endure some hardship as a result of long-term separation from the applicant. However the spouse's statement and the assessment provided do not establish that the hardships they would experience are beyond the hardships normally associated when a family member is found to be inadmissible.

Counsel states that the applicant's spouse has ongoing treatment for hypothyroidism, that health insurance provided by the applicant's employment pays for her care, and that if the applicant were in Poland he would be unable to provide insurance. The mental health assessment states that the spouse worries she will have no money for medical treatment without the applicant. Medical documentation submitted to the record shows that the spouse has hypothyroidism, but there is no prognosis and no explanation of its severity, any related health issues, or any required treatment and no indication that without the applicant's presence his spouse would be unable to obtain health care.

The applicant's spouse states that the applicant is the only income provider for the family. The applicant states that it is impossible to find jobs in Poland, so he would be unable to send money to his spouse, and counsel asserts that as Poland and the European Union have a poor economy and the applicant has no employment history there he cannot be expected to find employment. The applicant

also states that he performs the maintenance of his apartment building, which his spouse cannot do because it is too physically demanding and she does not have the necessary skills, so she could not maintain the building without paying someone to assist her with the maintenance. Counsel asserts that documentation shows that the applicant is losing money from his apartment investment and further states that the applicant's spouse has been out of the workforce for more than nine years and would face difficulties returning to the workforce. There is no indication from the record that the applicant's spouse is unable to work or that she could not receive assistance from her family financially or with management of the investment property. Here the record is insufficient to establish that without the applicant's physical presence in the United States his spouse and son will experience financial hardship.

It is recognized that the applicant's spouse and son will endure hardship as a result of separation from the applicant. 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 record. The difficulties that the applicant's spouse and son would face as a result of his separation from them, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The record does establish, however, that the applicant's spouse and child would experience extreme hardship if they were to relocate to Poland to reside with the applicant. The record shows that the applicant's spouse has resided in the United States since 1993, became a citizen in 1999, and has extensive family ties here. The applicant's spouse states that it is impossible to find work in Poland with only a high school education and that her son would have to learn a new language and leave behind cousins with whom he is very close. The mental health assessment states that if the son went to Poland he would leave the life he is used to for one of poverty and academic struggle. The record also shows that the applicant's son is socially active, successful in school with positive teacher comments, and close to his extended family.

If she were to relocate the applicant's spouse would have to leave her family, most notably her parents and siblings, and be concerned about her financial well-being as well as the welfare of her son in Poland. To uproot the applicant's son at this stage of his education and social development and relocate to Poland would constitute extreme hardship to him. *See Matter of Kao and Lin, supra*. It has thus been established that the applicant's spouse and son would suffer extreme hardship were they to relocate abroad to reside with the applicant due to his inadmissibility.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

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*NON-PRECEDENT DECISION*

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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.