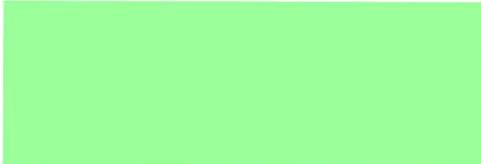


(b)(6)

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



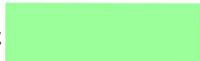
U.S. Citizenship
and Immigration
Services



DATE: MAY 13 2014

OFFICE: SAN JOSE

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:

SELF-REPRESENTED

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.

Thank you,

f3- [Handwritten Signature]

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Jose, California denied the waiver application and an appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted and the previous decision of the AAO is withdrawn.

The applicant is a native and citizen of Jordan 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), for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to 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, born in 2012.

The field office director concluded that the applicant had failed to establish that exceptional and extremely unusual hardship would be imposed on a qualifying relative. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly. *See Decision of the Field Office Director*, dated February 28, 2013.

On appeal, the AAO determined that the applicant had failed to establish that exceptional and extremely unusual hardship would be imposed on a qualifying relative. The appeal was consequently dismissed. *Decision of the AAO*, dated November 6, 2013.

On motion, the applicant asked the AAO to reopen his case in light of the fact that the Superior Court of California, Santa Clara County had recently set aside two judgments pursuant to section 1016.5 of the California Penal Code. Specifically, the applicant's September 20, 2002 conviction for Inflicting Corporal Injury on a Spouse, Cohabitant, Former Spouse or Former Cohabitant, a violation of section 273.5(a) of the California Penal Code (Case No. [REDACTED] was set aside on November 4, 2013. In addition, the applicant's April 2004 conviction for Petty Theft, a violation of section 484/488 of the California Penal Code (Case No. [REDACTED] was set aside on November 4, 2013. In support, copies of the referenced court documents were submitted.

On February 27, 2014, the AAO received additional information in support of the instant motion. The applicant stated that the Superior Court of California, Santa Clara County had recently set aside two additional judgments pursuant to section 1016.5 of the California Penal Code. Specifically, the applicant's 2003 conviction for Corporal Injury on Cohabitant with Prior Convictions, a violation of section sections 273.5(e) and 242-243(e) of the California Penal Code (Case No. [REDACTED] was set aside on January 10, 2014. In addition, the applicant's February 2004 conviction for Driving when Privilege Suspended or Revoked for Other Reasons, a violation of section 14601.1(A) of the California Vehicle Code (Case No. [REDACTED] was set aside. In support, the applicant submitted copies of the referenced court documents. In addition, the applicant submitted medical and financial documentation in support of extreme hardship to his family. The entire record was reviewed and considered in rendering this decision.

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) a violation of (or 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 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

...

Section 212(h) of the Act provides, in pertinent part, that:

The Attorney General 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

(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 establishes that in September 2002, the applicant was convicted in the Superior Court of California, County of Santa Clara of Inflicting Corporal Injury on a Cohabitant in violation of California Penal Code § 273.5(a) (Case No. [REDACTED]). In 2003, the applicant was convicted in the Superior Court of California, County of Santa Clara, of Corporal Injury on Cohabitant with Prior Convictions in violation of California Penal Code §§ 273.5(e) and 242-243(e) (Case No. [REDACTED]). In February 2004, the applicant was convicted of Petty Theft in violation of California Penal Code §484/488 (Case No. [REDACTED]). In April 2004, the applicant was convicted of Petty Theft in violation of California Penal Code §484/488 (Case No. [REDACTED]). In September 2004, the applicant was convicted of Grand Theft and Forgery in violation of California Penal Code §§ 470(D) and 484/487(A) (Case No. [REDACTED]).

On appeal, the AAO found that a waiver under section 212(h) was discretionary and the crime involving moral turpitude for which the applicant was convicted on two separate occasions, Inflicting Corporal Injury on a Cohabitant, was additionally a violent or dangerous crime as contemplated by 8 C.F.R. § 212.7(d). The AAO concluded on appeal that the applicant had failed to demonstrate that the challenges his spouse and child faced rose to the level of exceptional and extremely unusual hardship. *Supra* at 4-7.

On motion, the applicant has established to the satisfaction of the AAO that the Superior Court of California has set aside four of his guilty pleas and vacated the judgments pursuant to Cal. Penal Code § 1016.5 on finding that the trial court did not deliver the mandatory immigration warnings at the time the pleas were taken. The four vacated judgments are: 1) the applicant's 2002 conviction for Inflicting Corporal Injury on a Cohabitant (Case No. [REDACTED]), 2) the applicant's 2003 conviction for Corporal Injury on Cohabitant with Prior Convictions (Case No. [REDACTED]), 3) the applicant's February 2004 conviction for Driving when Privilege Suspended or Revoked for Other Reasons (Case No. [REDACTED]) and 4) the applicant's April 2004 conviction for Petty Theft (Case No. [REDACTED]). Thus, the AAO concurs with the applicant that the court's vacation of these four convictions under Cal. Penal Code § 1016.5 eliminates these specific convictions for immigration purposes.

Cal. Penal Code § 1016.5 provides:

- (a) Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant:

If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(b) Upon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of the advisement as described in this section. If, after January 1, 1978, the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement.

...

Based on the dismissal of the referenced convictions for Inflicting Corporal Injury on Cohabitant and Corporal Injury on Cohabitant with Prior Convictions, violent and dangerous crimes as contemplated by 8 C.F.R. § 212.7(d), the AAO concurs with the applicant that he is no longer required to establish exceptional and extremely unusual hardship to a qualifying relative, a standard more restrictive than the extreme hardship standard. Nevertheless, the applicant remains inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for the other convictions referenced by the AAO in its decision to dismiss the appeal, namely, the applicant's conviction in February 2004 for Petty Theft [REDACTED] and the applicant's conviction in 2004 for Grand Theft and Forgery ([REDACTED]). The applicant does not contest inadmissibility. The applicant requires a waiver under section 212(h) of the Act.

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 the U.S. citizen or lawfully resident spouse, parent or child of the applicant. In the present case, the applicant's U.S. citizen spouse and child are the only qualifying relatives. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS 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 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, 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.

On appeal, the AAO found that the hardship that would be endured by the applicant's wife and child as a result of separation from the applicant did not meet the "exceptional and extremely

unusual hardship” standard set forth in 8 C.F.R. § 212.7(d). Specifically, the AAO noted that despite the physical hardship referenced, the applicant's spouse was able to work and financially provide for the family. Further, with respect to the applicant’s spouse’s depression, although documentation had been provided establishing that the applicant’s spouse was being treated for a recurrent depressive disorder since December 2009, the record established that she had been prescribed medications for her condition and was seeing a therapist. The AAO acknowledged the applicant’s spouse’s contention that she would experience emotional hardship were she to remain in the United States while her husband relocated abroad, but the record did not establish the severity of this hardship or the effects on her daily life. *Supra* at 7.

On motion, the issues raised by the AAO have been addressed. To begin, the applicant has submitted documentation establishing that his spouse continues to be treated for depression and anxiety. The applicant has also provided documentation establishing that his spouse was recently treated in the emergency room for what he believes to have been a suicide attempt. The applicant has also submitted photographs indicating that his spouse has developed hives from the stress she is experiencing as a result of her husband’s inadmissibility. Finally, the applicant has presented evidence to establish that the applicant's spouse recently was terminated from her employment and is relying on the applicant for financial support. Based on a totality of the circumstances, the applicant has established on motion that his U.S. citizen spouse would experience extreme hardship were she to remain in the United States while the applicant relocates abroad.

In regard to relocating abroad to reside with the applicant as a result of his inadmissibility, the AAO found that no supporting documentation has been provided establishing the hardships the applicant’s spouse would experience abroad. *Supra* at 7. On motion, this criterion has been met. To begin, the applicant has provided documentation establishing that Muslim women are forbidden from marrying non-Muslim men. As the applicant contends, he is Christian and his wife is Muslim. In addition, a letter has been provided from [REDACTED] one of the directors at [REDACTED] in Jordan. She explains that inter-marriage between Muslims and non-Muslims is clearly prohibited in Jordan and the only allowance to this rule is the marriage of Muslim men with Christian and Jewish women. Ms. [REDACTED] further explains that health care for non-Jordanians is costly and as a result of the applicant’s spouse’s inability to speak the language and her lack of insurance, she will not be able to obtain affordable and effective medical and mental health care. *See Letter from* [REDACTED] dated January 24, 2014.

The record reflects that the applicant’s U.S. citizen spouse came to the United States as a refugee from Cambodia in 1983, more than thirty years ago. She has extensive community ties in the United States. The applicant’s spouse has no ties to Jordan and is unfamiliar with the country, culture, customs and language. Were she to relocate abroad to reside with the applicant, she would have to leave her home, her friends and her community. The applicant's spouse would also have to leave the medical and mental health professionals familiar with her conditions and treatment plan. Finally, she would be concerned for her safety and well-being as a result of her marriage to a Christian man. It has thus been established that the applicant’s spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse 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 factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and child would face if the applicant were to relocate to Jordan, regardless of whether they accompanied the applicant or stayed in the United States; the applicant's community ties; the applicant's gainful employment in the United States; the payment of taxes; support letters from family members and friends; evidence of the applicant's education in the United States in the last six years: a Bachelor of Science in Criminal Justice Administration, an Associate of Arts in Administration of Justice, an Associate of Arts in English, and an Associate of Arts in Liberal Arts; the applicant's placement in the Honor's List at [REDACTED] and the passage of more than nine years since the applicant's last conviction. The unfavorable factors in this

matter are the applicant's multiple convictions as outlined above and periods of unlawful presence and employment in the United States.

Although the violations committed by the applicant are serious in nature, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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 been met.

ORDER: The motion is granted and the previous decision of the AAO is withdrawn.