

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **OCT 15 2014** Office: CHICAGO FIELD OFFICE FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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,

for 

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the waiver application a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the prior AAO decision is affirmed.

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 we found that the record established that the applicant's spouse and child would experience extreme hardship if they were to relocate to Poland to reside with the applicant, but that the record failed to establish that the applicant's spouse and child would experience extreme hardship if they remained in the United States while the applicant resided in Poland due to his inadmissibility. *See Decision of the AAO*, dated June 18, 2014.

In support of the motion, counsel submits a brief. 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 December 22, 1997, the applicant was convicted in Circuit Court of [redacted] 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 record also reflects that on July 1, 2009, the applicant was convicted in Circuit Court of [redacted] 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 . . . and

- (A) Intends to deprive the owner permanently of the use or benefit of the property; or
- (B) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or
- (C) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

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.

On appeal counsel did not dispute 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.

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.

As noted above, on appeal we found the record to establish that the applicant's spouse and son would experience extreme hardship if they were to relocate to Poland to reside with the applicant. As such, this criterion will not be addressed on motion.

In the same decision, however, we found that the record did not establish that the applicant's spouse and son would experience extreme hardship due to separation from the applicant. We determined that the spouse's statement and a mental health assessment provided for the applicant's spouse and son did not establish that the hardships they would experience are beyond the hardships normally associated when a family member is found to be inadmissible. On appeal counsel had stated 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. We found that medical documentation shows that the spouse has hypothyroidism, but there was 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.

On appeal the applicant asserted that he would be unable to send money from Poland to his spouse, that he performs the maintenance of his apartment building, and that his spouse would be unable to maintain the building and would have to pay someone to assist her. Counsel asserted that the applicant is losing money from his apartment investment and that the applicant's spouse would face difficulties returning to the workforce. We determined that there was 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. We found the record insufficient to establish that without the applicant's physical presence in the United States his spouse and son will experience financial hardship.

On motion counsel asserts that the decision failed to recognize that the applicant and his spouse have been together since 1995 and that he helped her as they underwent medical treatments in order to conceive their child. Counsel also asserts that the decision did not consider that the applicant would not earn enough in Poland to support his spouse and child in the United States, failed to look at all factors in the aggregate, and did not consider that the spouse would go from an established family with a supportive husband and father to a single mother without a job.

Counsel asserts that medical records show the spouse has been treated for hypothyroidism that causes her to be fatigued, and that this ailment should be considered in determining whether she would be able to manage their apartment building or find a job to support her and her son. Counsel asserts that any depression the spouse may experience due to the applicant leaving may exaggerate the symptoms of hypothyroidism. Previously-submitted medical documentation from 2011 shows

that the spouse has hypothyroidism. However, no updated medical documentation has been submitted, and the documentation previously submitted provides little detail and no explanation of how the spouse's condition would prevent her from working or conducting management duties. Counsel also contends that the decision failed to consider the hardship of the applicant's spouse not having health insurance without the applicant maintaining his current employment. No evidence has been submitted to support the assertion that the applicant's spouse would be unable to obtain health insurance other than through the applicant's employment.

Counsel asserts that the decision ignores that the applicant is the only source of income for his spouse and son, and that if the spouse found work, someone else would have to take care of her son. Counsel further states that there is no evidence that her family could help to allow her to continue to be a stay-at-home mother. We note that the record reflects that the applicant's spouse lives near her large, close-knit extended family with whom she regularly visits, and there is no explanation why no one would be able to assist with childcare were she to return to the workforce.

Counsel asserts that the decision did not consider that the apartment building is losing money and incorrectly assumes that the applicant's spouse can manage on her own or obtain assistance from her family. Counsel contends that the decision makes no mention that the applicant performs all maintenance and repairs himself and that to hire a contractor to do that would be impossible due to the current finances of the building. Although we recognize the difficulties that the applicant's spouse would face managing their apartment building as a result of the applicant's absence, we do not find these difficulties to rise to the level of extreme hardship.

Counsel states that it is unclear why we found that the spouse would have difficulty finding a job in Poland with only a high school education while she would be able to find a job in the United States. On appeal counsel had submitted information for Poland and the European Union, including statistics, to support the assertion that the applicant's spouse would be unable to obtain employment in Poland, from where she emigrated more than 20 years ago. However, other than a news story with anecdotal accounts, no similar information has been submitted to support that the spouse would be equally unable to find employment in the United States, where she has resided since 1993.

On motion, the record does not support a finding that the applicant's spouse and son will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a loved one is removed from the United States. A waiver of inadmissibility is available only under limited circumstances. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his U.S. citizen spouse and son 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 motion to reopen is granted and the underlying decision dismissing the appeal is affirmed.