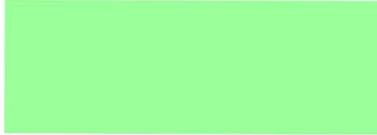




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **OCT 23 2014** Office: SAN JUAN, PUERTO RICO

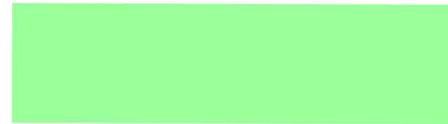
FILE: 

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  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, San Juan, Puerto Rico, denied the applicant's request for a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h). The applicant has appealed from that decision. The appeal will be dismissed.

The applicant is a native and citizen of Cuba. He is inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of his inadmissibility pursuant to section 212(h) of the Act. The director concluded that the applicant had failed to establish that a qualifying relative would experience extreme hardship.

On appeal, the applicant asserts that the director's decision was erroneous and an abuse of discretion.

The record contains, but is not limited to, the following documentation: a statement from the applicant's spouse; photographs of the applicant; naturalization and birth certificates for the applicant's sons; a naturalization certificate for the applicant's spouse; a copy of a marriage certificate for the applicant and his spouse; copies of the applicant's resident alien card, shopping club membership cards and department store account cards; copies of a criminal docket report and other documents related to the applicant's criminal convictions; a copy of the applicant's business registration documents; a copy of the applicant's car title and driver's license; and other documents which are in Spanish.

The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. As such, documents submitted into the record which are in Spanish cannot be considered.

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.

The record reflects that on July 20, 2000 in the United States District Court for the District of Puerto Rico, the applicant was convicted under federal law for a violation of 21 U.S.C. §§ 331(c) and 333(a)(2) for receiving misbranded drugs in international commerce with intent to defraud and mislead. The applicant was sentenced to 16 months of confinement and 3 years of probation. The District Director found this to be a conviction for a crime involving moral turpitude and that the applicant accordingly was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

At the time of the applicant's conviction, 21 U.S.C. § 331 stated in pertinent part:

The following acts and the causing thereof are prohibited:

....

(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

Further, 21 U.S.C § 333(a)(2) stated:

Notwithstanding the provisions of paragraph (1), if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than \$10,000, or both.

Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that “Whatever else the phrase ‘crime involving moral turpitude’ may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 U.S. 223, 232 (1951). Any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert denied, 383 U.S. 915 (1966); see also *In the Matter of P-----*, 6 I&N Dec. 795 (BIA 1955)(finding that a conviction under 21 U.S.C. 331 and 333 constituted a crime involving moral turpitude).

The applicant was convicted of a crime involving fraud, he is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. The applicant does not contest this finding on appeal.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . 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

(ii) 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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the applicant's U.S. citizen wife and lawful permanent resident sons. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (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*, 138 F.3d at 1293 (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 applicant asserts that the director’s decision was erroneous and an abuse of discretion. The applicant further states that the length of time that he and his spouse have been married and the loss of their family business is sufficient to establish extreme hardship, and that the director’s decision fails to discuss any other reason for denying the waiver application.

The applicant has not claimed that his sons will experience any hardship, therefore this decision will only examine hardship to his spouse.

The applicant’s spouse previously submitted a statement stating that she would experience emotional hardship if she had to separate from her spouse of 45 years. She stated that she and the applicant have two sons and many grandchildren and are a close-knit family. She also stated that they have a family business which depends on the applicant’s presence and which she and the applicant rely on to support themselves financially. If he departed, she states, she would be unable to support herself financially. She further explains that she would experience extreme hardship if she had to sever her family and community ties and relocate to Cuba, where she fears she would be persecuted for having naturalized as a U.S. citizen. She explains that she and the applicant would be unable to find employment sufficient to support themselves due to their age, and that the quality of living in Cuba would result in a hardship to her.

The record includes copies of business documents related to a pharmacy in Puerto Rico. While the applicant indicates he owns the pharmacy, a letter in the record, signed by the “president” of [REDACTED] indicates that the applicant is the manager. It is, therefore, unclear what the applicant’s role in the pharmacy is. In addition, there is insufficient documentation which explains the nature and volume of the business, the extent to which the business depends on the applicant or the amount of income provided by the business. Further, it appears that the pharmacy did not close during the period in which the applicant was incarcerated for a year and a half. Without additional evidence which demonstrates that the business could not be run by the applicant’s spouse, other family members or even additional employees, the record does not establish that the business would be unable to continue operating, or that the applicant’s spouse would experience economic hardship due to the applicant’s departure.

With regard to other financial impacts of departure, the record does not contain sufficient documentation to determine that the applicant’s spouse would be unable to meet her financial obligations if the applicant were removed. The business records that have been submitted do not include financial data, and there is no documentary evidence as to what the applicant’s spouse’s monthly living expenses or financial obligations are. In addition, the applicant’s spouse has stated that she has children and grand-children residing in Puerto Rico who may be in a position to mitigate the financial impact of the applicant’s departure. Without additional evidence to corroborate her assertions of financial hardship the record does not establish that she would experience financial hardship due to separation.

The record contains a marriage certificate for the applicant and his spouse, and birth certificates establishing that the applicant and his spouse have been married for a substantial period of time and have two children together. There are also photographs of family members and birth certificates for their grandchildren. The applicant’s spouse explains that she would experience emotional hardship if she was separated from her husband of 45 years. Based on the evidence in the record we find that the applicant’s spouse would experience some emotional hardship if she were separated from the applicant. However, the record indicates that the applicant’s spouse has children and grandchildren residing in Puerto Rico who are available to support her emotionally and this must be considered when weighing the overall emotional impact to the applicant’s spouse.

Although the record establishes that the applicant would experience some emotional hardship due to separation, this hardship, even when considered in the totality of the circumstances, does not rise to the level of extreme hardship.

With regard to hardship due to relocation, the applicant’s spouse has asserted that she would be unable to return to Cuba and that she would lose her social security and other benefits earned over her lengthy period of residence and employment in the United States. The record does not make clear how long she has resided in the United States. In addition, the record does not contain sufficient evidence to demonstrate how long the applicant’s spouse actually worked for their family business, what income she earned as part of that family business and what benefits she may have accrued from her work with the business. While her assertions have been considered, they are not

supported by evidence in the record and cannot establish that any hardships would result in uncommon hardship due to relocation.

With regard to returning to Cuba, the record is also deficient in documentary evidence. There are no country conditions materials or other documentation which support her assertions that she would be unable to return to the country of her birth, unable to find employment or that she would be persecuted based on her naturalization in the United States. The record does demonstrate that the applicant's spouse has many family members who reside in the United States which she would have to separate from if she relocated to Cuba. Nonetheless, as the record does not contain sufficient evidence to support the applicant's spouse's other assertions, we cannot find that the totality of the circumstances supports the assertion that the applicant's spouse would experience uncommon hardships rising to the level of extreme hardship upon relocation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has failed to establish extreme hardship to his U.S. Citizen spouse 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 proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.