



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 24 2015

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: [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:
[REDACTED]

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchild.

The Director concluded that the applicant's criminal conviction constituted a violent or dangerous crime and determined that the applicant failed to demonstrate exceptional and extremely unusual hardship. The Director denied the application accordingly. *See Decision of the Director*, dated August 8, 2014.

On appeal, counsel for the applicant asserts that the applicant's convictions do not constitute violent or dangerous crimes, as they are not in keeping with the types of crimes that have historically been found to be violent or dangerous. Accordingly, counsel asserts that the review of the applicant's inadmissibility waiver application should consider whether the applicant has demonstrated extreme hardship to a qualifying relative. Counsel contends that the applicant has demonstrated that the denial of his waiver application would cause extreme financial, physical and emotional hardship to his spouse and stepchild.

In support of the waiver application and appeal, the applicant submitted identity documents, legal documents, criminal records, letters of support, a joint letter from the applicant and his spouse, a letter from the applicant's spouse's mother, medical records for the applicant's spouse's mother, background country conditions for Jamaica, financial documentation, employment documentation for the applicant and his spouse, an individual letter from the applicant and an individual letter from the applicant's spouse. 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) 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 record reflects that the applicant, on September [REDACTED], was convicted of unlawful wounding and malicious destruction of property in the [REDACTED], Jamaica. On the same date, the applicant was sentenced to one year of probation. Accordingly, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) for being convicted of crimes involving moral turpitude. The applicant does not dispute his inadmissibility under this ground on appeal.

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

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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

As the applicant has been convicted of unlawful wounding, a dangerous and violent crime, he must also demonstrate that the denial of his application would result in exceptional and extremely unusual hardship.

8 C.F.R. § 212.7(d) provides, in pertinent part:

Criminal grounds of inadmissibility involving dangerous or violent crimes. The Attorney General [Secretary], in general, will not favorably exercise discretion under section 212(h)(2) of the Act . . . in cases involving violent or dangerous crimes, except...in cases in which the alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. . . .

Section 22 of the Jamaica Offences Against the Person Act provides:

Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

The words “violent” and “dangerous” and the phrase “violent or dangerous crimes” are not further defined in the regulation, and we are aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, “crime of violence,” is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). It provides that a “crime of violence,” as defined under 18 U.S.C. § 16, for which the term of imprisonment is at least one year, is an aggravated felony. As such, “crime of violence” is limited to those crimes specifically listed in 18 U.S.C. § 16. It is not a generic term with application to any crime involving violence, as that term may be commonly defined. That the DOJ chose not to use the language of section 101(a)(43)(F) of the Act or 18 U.S.C. § 16 in promulgating 8 C.F.R. § 212.7(d) indicates that “violent or dangerous crimes” and “crime of violence” are not synonymous. The Department of Justice clarified the relationship between these distinct terms in the interim final rule codifying 8 C.F.R. § 212.7(d):

[I]n general, individuals convicted of aggravated felonies would not warrant the Attorney General's use of this discretion. In fact, the proposed regulations stated that even if the applicant can meet the "exceptional and extremely unusual hardship" standard for the exercise of discretion, depending upon the severity of the offense, this might "still be insufficient" to obtain the waiver. See 67 FR at 45407. That language would substantially limit the circumstances under which an individual convicted of an aggravated felony would be granted a waiver as a matter of discretion. Therefore, the Department believes that this language achieves the goal of the commenter while not unduly constraining the Attorney General's discretion to render waiver decisions on a case-by-case basis.

67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Therefore, the fact that a conviction constitutes an aggravated felony under the Act may be indicative that an alien has also been convicted of a violent or dangerous crime, but it is not dispositive. Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual “case-by-case basis.” We interpret the phrase “violent or dangerous crimes” in accordance with the plain or common meaning of its terms, consistent with any published precedent decisions addressing discretionary denials under 8 C.F.R. § 212.7(d) or the standard originally set forth in *Matter of Jean*. Given the plain language of the statute under which the applicant was convicted, maliciously wounding or inflicting grievous bodily harm upon another individual, we find that the applicant’s conviction renders him subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

Counsel for the applicant asserts that the applicant’s conviction for unlawful wounding is not in keeping with other crimes that have been found to be violent or dangerous, such as manslaughter, rape, child molestation, burglary and robbery. Counsel contends that the facts upon which the applicant’s criminal conviction rely, as related by the applicant, and the sentence of the court suggest that the applicant’s conviction cannot be violent or dangerous. The record contains a court record of conviction for the applicant’s crime identifying the applicant’s date of conviction, type of conviction and sentence and no further information. The record does not contain supporting court or enforcement documentation for the applicant’s explanation of his conviction. Even so, before considering the particular facts of the applicant’s criminal case, based on the plain language of the statute of the applicant’s conviction alone, the applicant’s conviction for unlawful wounding is found to be a conviction for a violent or dangerous crime. Further, the applicant does not cite any case law holding that his conviction is not for a violent or dangerous crime and it is the applicant’s burden to demonstrate his admissibility to the United States. *See* Section 291 of the Act, 8 U.S.C. § 1361.

Accordingly, the applicant must show that “extraordinary circumstances” warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant’s admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, we will consider whether the applicant has “clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship” to a qualifying relative. *Id.*

The exceptional and extremely unusual hardship standard is more restrictive than the extreme hardship standard. *Cortes-Castillo v. INS*, 997 F.2d 1199, 1204 (7th Cir. 1993). Since the applicant is subject to 8 C.F.R. § 212.7(d), merely showing extreme hardship to his qualifying relatives under section 212(h) of the Act is not sufficient. He must meet the higher standard of exceptional and extremely unusual hardship.

The record reflects that the applicant is a 34-year-old native and citizen of Jamaica. The applicant’s spouse is a 40-year-old native of the Bahamas and citizen of the United States. The

applicant is currently residing in [REDACTED] Jamaica and his spouse and stepchild are residing in [REDACTED] Florida.

Counsel for the applicant asserts that the applicant and his spouse met in Jamaica in December 2008 and married in Jamaica on [REDACTED]. Counsel asserts that the applicant's spouse is financially responsible for her own household and that of the applicant's in Jamaica. As such, counsel contends that the applicant's spouse would no longer have to provide for two households and the applicant could find employment in the United States if he were allowed to enter and reside with his spouse. Counsel also asserts that the applicant's spouse would face loss of employment and career development opportunities without the applicant's support in the United States. There is no explanation concerning the basis of this assertion, as the applicant's spouse has secured and maintained her employment throughout her consistently long-distance relationship with the applicant.

The applicant's spouse asserts that she supports herself, her daughter, the applicant, the applicant's son, and provides her mother with 250 dollars per month to supplement her social security. The applicant's spouse contends that at 38,000 dollars income a year, she has been providing money to the applicant for two years and barely has enough to meet expenses and visit the applicant in Jamaica. The record contains evidence of money transfers picked up by the applicant on multiple dates, but does not indicate the sender of the money. The record also contains past due bills for the applicant's spouse including electric, phone, credit cards and a loan.

The applicant's spouse submitted four separate pay receipts from her employer, but the record does not contain a W-2 form or tax return or other supporting documentation concerning her annual income. The pay receipts from the applicant's spouse's employer indicate that she is paid on a biweekly basis. Extrapolating from the submitted pay receipts, reflecting a gross biweekly pay ranging from 2,098.14 dollars to 3602.60 dollars, would indicate a gross annual income ranging from 54,551.64 dollars to 93,667.60, rather than the stated 38,000 dollars.

Counsel and the applicant's spouse indicate that applicant's spouse has the financial resources to regularly visit the applicant in Jamaica. Further, the record contains two letters of support from individuals from June 2014 stating that the applicant is given work on compressors and in construction whenever assistance is needed, indicating that the applicant earns some amount of income in Jamaica. However, the record does not contain any supporting documentation concerning any income earned by the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record also does not contain a monthly accounting of income and expenses for the applicant's spouse with supporting documentation. The applicant has failed to demonstrate with sufficient evidence that his spouse would be unable to meet her financial obligations if he remains in Jamaica.

Counsel for the applicant asserts that the applicant's spouse is the sole caretaker for her 81-year-old mother, who suffers from medical ailments. Counsel contends that the applicant's spouse takes care of her mother's daily needs, making sure that she is fed, taken to doctor's appointments, provided with medication and treatments and cared for on a daily basis. Counsel asserts that the applicant, if he resided in the United States, would be able to help the applicant's spouse care for both her daughter and her mother.

The record contains a letter from the applicant's mother's physician stating that the applicant's spouse's mother has been under treatment for hypertension, diabetes, heart disease, stomach ulcers, instability, claudication, COPD, arthritis, anxiety and depression. The letter also states that, according to records, the applicant's spouse has been the caretaker for her mother for the past ten years. The applicant's mother's physician's letter does not indicate what treatment she is currently undergoing for her medical ailments or the extent to which she requires assistance and care. The applicant's spouse asserts that her mother, brother, sister-in-law, nieces and nephews all live within a few miles of the applicant's spouse and that her sister-in-law often watches the applicant's daughter. There is no explanation concerning why the applicant's spouse's mother son and daughter-in-law would be unable to provide any assistance to the applicant's spouse's mother.

The record does not contain any assertions concerning any hardship the applicant's stepdaughter is suffering due to separation from the applicant.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse is suffering hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse and her daughter are suffering exceptional and extremely unusual hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse would face loss of employment and career development opportunities if she relocated to Jamaica to reside with the applicant. Counsel asserts that the applicant's spouse is contractually obligated to remain with her employer for three years and would otherwise have to repay thousands in student loans. Counsel further contends that the applicant's spouse would likely face the same or worse employment prospects as the applicant if she resided with him in Jamaica. The applicant's spouse asserts that she is a team lead in her career with her company and it would financially ruin her to repay her student loan tuition to her employer. The applicant's spouse also contends that she would default on all her financial debts in the United States and lose her medical insurance upon relocation to Jamaica.

The record contains a continuing education agreement between the applicant's spouse and [REDACTED], signed October 28, 2010, stating that the employee must work three years from the date of the last tuition reimbursement in order to terminate employment with no tuition repayment obligations. The agreement indicates that the applicant's spouse's anticipated graduation date was July 8, 2012, and there is no information concerning the date of the last

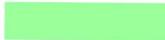
tuition reimbursement made by her employer. The record also does not contain school and financial supporting documentation indicating the amount of credits taken by the applicant's spouse and the full amount of tuition reimbursement, including the amount the applicant's spouse would be charged with repaying upon relocation to Jamaica. The record includes bills indicating the applicant's spouse's other financial obligations in the United States. The record also contains U.S. Department of State facts concerning Jamaica, dated January 17, 2012, stating that unemployment is high, averaging at least 12%. The record does not contain any updated background information concerning Jamaica's economy. The fact report submitted from 2012 also states that Jamaica's economy is improving. The record does not contain any information concerning the extent to which the applicant, currently residing in Jamaica, has any family members who could and would assist with his family's relocation. It is acknowledged that the applicant's spouse asserts that she is currently sending the applicant money in Jamaica to support him and his son.

The applicant's spouse asserts that leaving the United States would mean leaving behind family ties, as she currently lives within a few miles of family members. The record contains letters of support from friends, colleagues and family members of the applicant's spouse submitted from individuals residing in the United States.

The applicant's spouse contends that amongst her relatives, she would leave behind an ailing mother for whom she is responsible and her daughter, as she shares custody with her daughter's biological father. The applicant's spouse asserts that her mother's medical ailments have rendered her incapable of taking care of even her basic daily needs. As noted, the record contains a list of diagnoses for the applicant's spouse's mother, but does not detail the extent to which she must rely upon the support of others in her daily life. Rather, the letter from the applicant's spouse's mother's physician states that she relies upon the applicant's spouse to translate and that the applicant's spouse is her emergency contact and retains power of attorney. The record contains a letter from the applicant's spouse's mother asserting that she relies on the applicant's spouse to take her to her doctors' appointments, grocery shopping, fill out her food stamp applications and clean her home on a weekly basis.

The applicant's spouse's mother asserts that the applicant's spouse shares custody of her daughter with her daughter's biological father, with him caring for their daughter three days a week and the applicant's spouse having custody the other four. The record does not contain any court or other supporting documentation concerning custody rights for the applicant's spouse's daughter. The record also does not contain any submission from the applicant's spouse's daughter's biological father relating his opinion concerning her relocation.

The applicant's spouse asserts that her daughter would be unable to relocate to Jamaica because her biological father would fight her relocation in court. As noted, the record does not contain a custody agreement or submission from the applicant's spouse's daughter's biological father. However, the record indicates that the applicant's spouse's daughter spends a large amount of time with her biological father. The applicant's spouse asserts that her daughter has a wonderful relationship with her biological father so that separation from him would devastate her.



Though the record contains sufficient evidence to demonstrate extreme hardship to the applicant's spouse and her daughter, it does not contain sufficient evidence to show that the hardships faced by either of the qualifying relatives, in the aggregate, would rise to the level of exceptional and extremely unusual hardship.

We therefore find that the applicant has failed to establish exceptional and extremely unusual hardship to his U.S. citizen spouse or stepchild as required under 8 C.F.R. § 212.7(d). As the applicant has not established the requisite hardship to a qualifying family member the appeal is dismissed 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.