



U.S. Citizenship
and Immigration
Services

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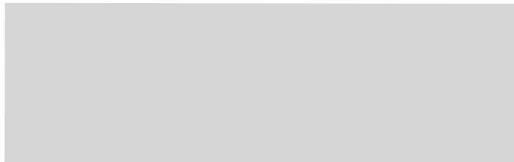
DATE: **JUL 02 2015**

FILE: [REDACTED]
APPLICATION RECEIPT: [REDACTED]

IN RE: APPLICANT: [REDACTED]
[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park Field Office, denied the application. 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 Germany 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 a crime involving moral turpitude. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, and is married to a U.S. citizen. She 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.

The Field Office Director concluded that the applicant had failed to establish that her removal would result in extreme hardship to the applicant's qualifying spouse. *See Decision of Field Office Director*, dated September 9, 2014.

On appeal, the applicant, through counsel, submits a brief and additional evidence, asserting that she has shown that her qualifying spouse would suffer extreme hardship if the waiver is denied, due to his poor health, his inability to speak German, and the unavailability of affordable health care in Germany. *See Brief in Support of Form I-290B, Notice of Appeal or Motion*, dated October 3, 2014.

The record includes, but is not limited to: a brief, statements from the applicant's qualifying spouse and his daughter, identity and relationship documents, medical records, health insurance documents, court records, and photographs. 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.)

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

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

....

(1) (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 [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 . . .

The record reflects that on [REDACTED] 2013, the applicant was found guilty of 27 counts of insurance fraud in the criminal division of the [REDACTED] Court in Germany. The record reflects that she was sentenced to a maximum aggregate term of imprisonment of 10 months and that imprisonment was suspended on probation.

In the present case, the record reflects that the applicant was convicted for fraud. 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). Therefore, we concur that the applicant’s conviction for insurance fraud is for a crime involving moral turpitude. The applicant does not contest this determination on appeal.

As the applicant has not contested her inadmissibility and the record does not show that determination to be in error, we will not disturb the Field Office Director’s determination that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for her convictions of crimes involving moral turpitude.

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996). The applicant’s U.S. citizen spouse is her qualifying relative.

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.

We will first address hardship to the applicant’s qualifying spouse if he relocates to Germany. The applicant asserts that her qualifying spouse has a rare and aggressive cancer, metastatic ganglioneuroblastoma. She states that her qualifying spouse is receiving experimental treatment here and suggests that such treatment is unavailable in Germany. In addition, the applicant’s qualifying spouse says that he does not speak German, so he would have difficulty communicating with health care providers in Germany.

The applicant asserts that her qualifying spouse’s health care is paid for by Medicare and his Medicare supplemental insurance. She further states that Medicare does not pay for health care costs incurred outside the United States, except in very limited circumstances that do not apply to her spouse. The applicant expresses concern that her qualifying spouse would suffer undue financial hardship if forced to pay for health care in Germany. As evidence of her qualifying spouse’s financial situation, she submits a statement from her qualifying spouse, who states that if he relocates to Germany, he would be individually responsible for all costs of medical treatment, which he says he cannot afford without insurance. The record contains a copy of the applicant’s qualifying relative’s Form SSA-1099, showing he received \$22,474.80 in Social Security benefits in 2012; and a copy of his Form 1099 from [REDACTED] showing he received a distribution in the amount of \$2,000.80 in 2012. The record also contains a copy of the applicant’s qualifying spouse’s divorce decree indicating that the qualifying spouse has retirement benefits under a group annuity contract issued by [REDACTED]. The applicant submits no other evidence of her spouse’s

financial circumstances, such as his tax returns and assets. The applicant submits proof of her qualifying spouse's Medicare and supplemental insurance coverage in the form of copies of his insurance cards. She supplies information from a website outlining the limited circumstances in which Medicare pays for health care costs incurred outside of the United States.

In review, the evidence is insufficient to establish that the applicant's qualifying spouse could not receive or afford to pay for proper medical care in Germany. Though the applicant has shown that her spouse cannot use federal benefits to pay for his health care costs in Germany, she has not provided evidence of health care options available to spouses of German citizens, particularly those requiring treatment for rare conditions. The applicant also does not provide evidence concerning the availability of treatment of the applicant's specific condition in Germany. Moreover, she has not addressed what the cost of such care could be. In addition, the record includes no information about her own assets in Germany and the possibility that she could find suitable employment that would permit her to assist her spouse with these costs. 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 therefore lacks sufficient evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that the applicant's qualifying spouse would suffer extreme hardship upon relocation to Germany.

We will now address hardship to the applicant's qualifying spouse if he remains in the United States. The applicant asserts that her qualifying spouse relies upon her for help with day-to-day activities, including personal care, and that he has no one else to provide that care.

In support of her claim that separation would cause her qualifying spouse extreme hardship, the applicant submits letters from several of her qualifying spouse's physicians, who describe her spouse's condition as rare, aggressive, and incurable. One physician writes that the applicant's qualifying spouse must take pain medication that causes vision changes and fatigue. According to another doctor, the applicant's qualifying spouse would be devastated and would experience additional stress that is counterproductive to his health if the applicant is not allowed to remain in the United States to care for him. The applicant's qualifying spouse states that cancer has caused numbness and limpness in his limbs, loss of vision, and intense pain, such that he cannot care for himself. He writes that he cannot drive and he relies upon the applicant for help with day-to-day activities, including personal care. The applicant's daughter-in-law, moreover, explains she is unable to care for the applicant's spouse, primarily because she lives and works in California and cannot afford to relocate to Florida to provide her father with the same care the applicant provides. She also describes her \$30,000 property debt and inability to accommodate the applicant's spouse in her own home.

In review, the record reflects that the applicant's qualifying spouse needs assistance with his day-to-day activities and for his medical needs. Specifically, the applicant's qualifying spouse has an incurable and aggressive medical condition that limits his vision and causes him intense pain and numbness. The applicant's spouse relies upon her for emotional and physical support. We find that the record contains sufficient documentary evidence of emotional, physical, and medical

hardship that, considered in the aggregate, establishes that the applicant's qualifying spouse would suffer extreme hardship if he remains in the United States and the waiver is denied.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

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.