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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: **JUN 15 2015**

FILE: [REDACTED]

APPLICATION RECEIPT: [REDACTED]

IN RE: Applicant: [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:



INSTRUCTIONS:

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Memphis 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 El Salvador who was found to be inadmissible under section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having multiple criminal convictions. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The field office director determined that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 24, 2014.

On appeal the applicant asserts that the field office director miscalculated his sentences for confinement and erred in finding him inadmissible because they totaled more than five years. He further asserts that his youngest daughter will experience extreme hardship if he is removed from the United States. With the appeal the applicant submits a statement. The record contains statements from the applicant's daughter, letters of support from family and friends, financial information, documentation relating to the applicant's convictions, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(B) states:

(2) Criminal and related grounds.-

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

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 -

....

(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.

The record reflects that the applicant has a history of arrests and convictions dating from the 1980s until 2009. On appeal the applicant admits to an extensive criminal record, but asserts that in determining that his sentences of confinement totaled five years or more, the field office director did not consider that pursuant to the Tennessee Rules of Criminal Procedure, sentences imposed at one trial are seemed to be concurrent unless the order of the trial judge specifies that they are to run consecutively. The applicant claims that some sentences were therefore counted twice, and that the actual calculation is less than five years.

The record contains copies of court orders for some of the applicant's convictions that indicate that sentences imposed were to run concurrently with other cases or charges. These include copies of judgments from the [REDACTED] Municipal Court for a November 10, 2008, conviction for resisting arrest and a September 15, 2009, conviction for several charges, including driving under the influence and violation of probation. The record also contains an April 6, 2006, judgment sentencing the applicant to 30 days in jail for fishing without a license. The record does not contain copies of court orders for the applicant's other convictions in 2004, 2006, and 2008, but rather printouts from the [REDACTED] Municipal Court listing the charges and dispositions. It is not clear from these printouts whether the judge ordered any of the sentences to run consecutively, and the applicant has not submitted copies of the judgments and sentencing orders for these convictions. The record contains September 15, 2009, court orders indicating that sentences for four of the applicant's convictions (two for violation of probation in 2009 and two for driving under the influence and driving with a suspended license in 2008) were to run concurrently. Even taking this evidence into account, the applicant has convictions dating from 2004 to 2009 in Tennessee, as well as a conviction in Texas in 1998 for driving under the influence, for which the aggregate sentences to confinement were 5 years or more. He has not submitted evidence on appeal sufficient to overcome the determination that his aggregate sentences to confinement were five years or more. We further note that in a February 5, 2013, written decision an immigration judge determined that, based on documents submitted to the court, the applicant had been sentenced to more than five years imprisonment in the aggregate, making him inadmissible under section 212(a)(2)(B).

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, son or daughter of the applicant. The applicant's U.S. citizen daughters are the only qualifying relatives in this case. 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-Moralez*, 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.

The applicant states that his divorce from his daughter's mother was devastating to her and that she grew up angry, affecting her school, her relationship with her mother, and dating. He states that his daughter had lost communication with him, but now they have reconnected and have a strong

relationship. He asserts that the threat of losing her father again caused his daughter stress during a pregnancy and she had to quit work to protect the baby.

The applicant's daughter states that the applicant was not a part of her life for 10 years and that she was mad at him for leaving her long ago. She states that she was very happy when he returned to her life and that now she talks to him about problems and struggles. She states that stress due to the applicant's situation affected her health during her pregnancy, and that she does not want the applicant to be "just a picture" for her son.

Although we recognize that the applicant and his daughter are re-establishing their relationship, the statements from the applicant and his daughter provide insufficient detail to establish that the daughter would experience hardship beyond the common results of removal due to separation from the applicant. Statements and letters of support submitted to the record indicate that the applicant's daughter lives with her mother in Texas while the applicant lives in Tennessee, that she is in contact with the applicant by phone and that she needs him in her life now, and that the daughter intends to marry. The record does not contain other evidence concerning the emotional hardship the daughter states she would experience from separation from the applicant or how such emotional hardships are outside the ordinary consequences of removal.

The applicant states that he helps his daughter financially and that she counts on him for financial support to care for her child. The daughter states that the applicant helps her with car repairs and rent. Financial documentation submitted to the record shows that the applicant has sent money to his daughter. However, no documentation has been submitted to the record establishing the daughter's current income, expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's daughter will experience financial hardship.

We recognize that the applicant's daughter will endure hardship as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

We also find the record fails to establish that the applicant's daughter would experience extreme hardship if she were to relocate to El Salvador to reside with the applicant. The applicant states that El Salvador is too dangerous to relocate, that he has no family there, and that there are few employment opportunities at his age, which would cause a financial strain on everyone. The daughter states that she has no family in El Salvador, that the country is corrupt and unlivable, that there is no support system there, and that her life is deeply rooted in the United States. The applicant submitted to the record a U.S. Department of State Travel Warning, dated August 25, 2014, and news accounts of violence in the country. These reports describe general country conditions and anecdotal accounts of violence, but the record does not indicate how they would specifically affect the applicant's daughter, nor does the record note where the applicant would reside, to establish that the applicant's daughter would be at risk if she were to relocate to El Salvador.

The record, reviewed in its entirety does not support a finding that the applicant's U.S. citizen daughter will face extreme hardship if the applicant is unable to reside in the United States. Rather,

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the record demonstrates that she 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 or refused admission. Although we are not insensitive to the daughter's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. 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 appeal is dismissed.