



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF R-F-D-S-

DATE: NOV. 13, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Brazil, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Boston Field Office, denied the application. The Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before us on a motion to reopen and reconsider. The motions will be denied.

The Applicant was found inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been involved in a crime related to a controlled substance.<sup>1</sup> The Director concluded that the Applicant did not establish the requisite hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. We similarly concluded that the Applicant did not provide sufficient evidence to show his U.S. citizen spouse would experience extreme hardship if his application were denied and dismissed the appeal.

On motion to reopen and reconsider, the Applicant asserts that his spouse would suffer extreme hardship if his waiver application is denied.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Here, the Applicant submits new documentary evidence to support a motion to reopen but has not stated that the prior decision was based on incorrect application of law or policy. We therefore will consider the new evidence as part of a motion to reopen.

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<sup>1</sup> The Field Office Director referred to the Applicant's controlled substance violation, specifically marijuana possession, as a crime involving moral turpitude; the record, however, does not reflect that this violation also makes the Applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

(b)(6)

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On motion, the Applicant submits a forensic evaluation, medical documentation about the Applicant's qualifying spouse, reports about conditions in Brazil, the Applicant's school records, a list of expenses, financial documentation, and letters from employers and family members. The entire record was reviewed and considered in rendering a decision on the motion.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

....

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

The record reflects that, on [REDACTED] 2005, the Applicant admitted sufficient facts to Possession of a Class D Drug (Marijuana), in the Trial Court of Massachusetts, [REDACTED], in violation of Massachusetts General Laws Annotated (M.G.L.A.) 94C § 34, and was sentenced to two years of probation and ordered to remain drug-free and to submit to urinalysis as required by his probation officer. The record establishes that the Applicant was arrested with less than six grams of marijuana. The Applicant does not dispute that he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

The record also reflects that on [REDACTED] 2005, the Applicant admitted sufficient facts to Possession of a Class B Drug (Cocaine), in the Trial Court of Massachusetts, [REDACTED] in violation of M.G.L.A. 94C § 34, and was sentenced to two years of probation and ordered to remain drug-free and to submit to urinalysis as required by his probation officer. The Applicant subsequently moved for a new trial on September 8, 2010. The basis for his motion for a new trial under Rule 30 of the Massachusetts Rules of Criminal Procedure was that it was in the interest of justice and that he had "newly discovered evidence," which indicated that the cocaine did not belong to the Applicant, and one of the affiants admitted the cocaine was his. The count relating to his cocaine possession was dismissed on September 28, 2010. As such, the Applicant's cocaine possession count was not dismissed for immigration purposes but rather for a violation of his rights within his criminal proceedings. Accordingly, this evidence indicates that the Applicant was not convicted, within the meaning of section 101(a)(48)(A) of the Act, for possession of cocaine, in violation of M.G.L.A. 94C § 34.

As the Applicant demonstrated that he was convicted of a single offense of simple possession of 30 grams or less of marijuana, he is eligible to seek a waiver under section 212(h)(1)(B) of the Act.

A waiver for this ground of inadmissibility is outlined in section 212(h) of the Act, which provides, in pertinent part:

The [Secretary] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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 [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 . . . ;  
and

the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he 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.

A waiver of inadmissibility under section 212(h)(1)(B) 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 an applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's U.S. citizen spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable 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 deportation, 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, 885 (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 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.

In our previous decision, we addressed the Applicant’s assertions that his spouse would experience emotional and financial hardships if she were to be separated from him. We concluded that the record contained insufficient evidence to establish that she would suffer hardship that, considered in the aggregate, was extreme.

On motion, the Applicant submits an evaluation by a licensed independent clinical social worker (LICSW), who states that if the Applicant is deported and separated from his spouse, her depression

and anxiety would likely worsen and “the results might be catastrophic to her mental health.” The LICSW notes that separation would frustrate the Applicant’s spouse’s desire to have a child with the Applicant, because natural conception would be impossible and she does not want to raise a child alone.

The Applicant also asserts that he would no longer be able to financially help his wife and her extended family and that he and his wife would lose their comfortable lifestyle. On motion, the Applicant provides evidence that he pays child support for his wife’s relative. He also provides copies of Internal Revenue Service Form 1040, Schedule C, profit or loss from business statements, showing he has contributed \$22,000 per year on average to his household since 2003.

The evidence shows that the Applicant’s spouse is likely to experience emotional hardship upon separation. The Applicant, however, does not provide evidence on motion to support assertions that his potential inability to assist his spouse’s family would cause his spouse additional emotional or financial hardship. Moreover, given evidence of her employment and contributions to the family’s household income, the evidence submitted does not support finding that his spouse would experience financial hardship without the Applicant’s assistance or that he would not be able to financially assist her from Brazil. The evidence, considered in the aggregate, does not reflect hardship to the Applicant’s spouse that is beyond the common results of removal or inadmissibility and that could be considered extreme.

In our previous decision, we also addressed the Applicant’s assertions that his spouse would experience extreme hardship if she were to relocate to Brazil. We determined that the Applicant had not provided evidence to corroborate his spouse’s claims about her relationship with her family in the United States. We also addressed his spouse’s assertions that she takes care of her mother by taking her to medical appointments and helping with her medications and noted that the Applicant did not explain whether other family members could help his mother-in-law with her appointments and medications if his spouse relocated to Brazil. Moreover, we addressed his spouse’s concern that her family would not be able to visit her due to financial and medical constraints and found the evidence in the record was insufficient to support these assertions. We also considered his spouse’s assertions that she would be unable to find employment because of her lack of language skills and an advanced degree or professional license. In addition, we found that the record did not contain sufficient documentation to corroborate her assertions that her skills would not be transferrable to Brazil and that she would be unable to afford travel to the United States to visit her family. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

Concerning hardships related to the Applicant’s spouse’s health issues upon relocation, the Applicant’s spouse indicated that she suffers from polycystic ovarian syndrome and hypothyroidism, which contribute to her depression and anxiety. She stated that she is currently undergoing treatment to achieve her goal of having a family; that she must be “closely monitored”; and that if her treatment is interrupted by moving to Brazil, where she does not have healthcare, she would never be

able to conceive a child. We determined that the record contained proof of the Applicant's spouse's medical care but lacked information regarding her specific treatment in the United States.

The Applicant expresses concern about his spouse's financial, medical, and emotional hardship upon relocation. The Applicant's spouse states that she would have difficulty because the Applicant would be unlikely to find employment, she would have difficulty obtaining medical care, and she would be isolated. According to the LICSW report, the Applicant is unlikely to be successful in business in Brazil and his wife would have difficulty starting over at the age of 35. The LICSW's qualifications to assess the Applicant's financial and professional prospects in Brazil are not clear. In the absence of objective supporting evidence, these conclusions are of limited value. The Applicant provides no other evidence to support assertions concerning the lack of employment prospects for himself and his spouse in Brazil.

On motion the Applicant provides evidence that his spouse takes anti-depressant medication and is determined to be infertile due to polycystic ovaries. The Applicant asserts that she would have difficulty finding adequate medical care in Brazil and would have difficulty communicating because she does not speak Portuguese. On motion, however, the Applicant does not provide evidence to corroborate assertions regarding the availability of suitable health care.

According to the LICSW's report, if the Applicant's wife relocates, her anxiety and depression would likely increase significantly because she would be isolated in Brazil. In addition, the Applicant submits letters from his spouse's family demonstrating that she has strong family ties in the United States.

Although the evidence shows that the Applicant's spouse would experience a degree of emotional hardship upon relocation, the Applicant, as noted above, has not provided sufficient evidence to establish that she would experience medical or financial hardship in Brazil. Therefore, in this case, the record does not contain sufficient evidence to show that the hardships faced by the Applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has not established 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 he merits a waiver as a matter of discretion.

The motion does not establish that our previous decision was based on an incorrect application of law or policy and therefore the motion to reconsider will be denied. The motion to reopen will be denied.

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, the Applicant has not met that burden. Accordingly, the motion to reopen and reconsider will be denied.

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**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of R-F-D-S-*, ID# 12918 (AAO Nov. 13, 2015)