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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

H5

[redacted]

Date: JUL 06 2011 Office: ATLANTA FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Hammond

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Burkina Faso 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. He was also found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by willful misrepresentation. He seeks waivers of inadmissibility in order to reside in the United States with his U.S. citizen wife and stepchildren.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director,* dated February 27, 2009.

On appeal, counsel for the applicant asserts that the applicant's wife and stepchildren will endure extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated March 29, 2009.

The record contains, but is not limited to: a brief from counsel; tax, employment, and business documentation for the applicant and his wife; statements from the applicant's wife, sister-in-law, and mother-in-law; medical documentation for the applicant's wife and one of his stepdaughters; and documentation in connection with the applicant's criminal conviction. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record shows that the applicant entered the United States using a passport and B visa under a different name. The field office director determined that the applicant entered the United States by making a material misrepresentation (his true identity and possession of valid documents making him eligible for admission), and thus he is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act on appeal, and he requires a waiver under section 212(i) of the Act.

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

> (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 shows that, on February 10, 2005, the applicant pled guilty in Georgia to theft by receiving stolen property under Georgia Statute § 16-8-7. As a result, the field office director determined that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The applicant does not contest this finding on appeal.

As noted in a prior decision of the AAO on December 23, 2008, the applicant has not provided sufficient documentation to determine whether his conviction under Georgia Statute § 16-8-7 falls under the "petty offense" exception found in section 212(a)(2)(A)(ii) of the Act, as the provided documentation does not indicate the subsection of law under which he was convicted that would show the maximum sentence he faced for this conviction. Nevertheless, the record clearly establishes that the applicant requires a waiver of inadmissibility under section 212(i) of the Act, and he must obtain a waiver under that provision in order to show that he is admissible to the United States. Thus, the AAO will first address whether the applicant has established eligibility under section 212(i) of the Act before analyzing his criminal history and eligibility for a waiver under section 212(h) of the Act.

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

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) 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 or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 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 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

In a statement dated April 10, 2006, the applicant's wife provided that she and the applicant were married on April 27, 2001, and that they have lived as husband and wife since. She stated that she has been diagnosed with Endometriosis which requires the applicant to assist in all family matters at least five to seven days each month. She added that she assists the applicant with their family business, they function as a team, and that his removal would disrupt their unity and cause extreme hardship.

The record contains a form from that indicates that the applicant's wife could return to school or work on January 2, 2006 with "no limitations or restrictions." The applicant has not provided any other documentation of his wife's claimed medical problems.

In a statement received on or about September 7, 2008, the applicant's sister-in-law lauded the applicant's good character. She stated that the applicant's wife was sick "[a] few years ago" and that the applicant was dedicated to helping her become well. In a statement received on or about September 7, 2008, the applicant's mother-in-law indicated that the applicant makes a strong contribution to his family and community and that she and their family will endure hardship if he departs the United States.

The record contains medical documentation for the applicant's stepdaughter, , showing that she had seizures after receiving a vaccination on or about December 11, 2007. The documentation indicated that "[t]here is no need to treat her with an anti-convulsant at this time," and that "her risk for further seizures is low."

Counsel contends that both the applicant's wife and stepdaughter have a history of medical problems, and that if their conditions resurface the family will require the applicant's emotional and financial assistance. Counsel explains that the applicant owns and operates an automobile tire and parts business and that his wife assists him. Counsel asserts that the applicant's presence and knowledge is required for the business, and that the business will collapse and his family will endure economic hardship if the applicant departs. Counsel notes that the applicant's wife was able to return to school due to support from the business.

Counsel contends that the applicant's wife and family would be unable to relocate to Burkina Faso due to a lack of needed medical care. He adds that neither the applicant's wife or daughter speak the local language or have visited Burkina Faso, thus they would have difficulty adjusting to life there. Counsel asserts that the applicant and his wife would be unable to obtain employment in Burkina Faso, thus they would face economic hardship there.

Upon review, the applicant has not shown that his wife will suffer extreme hardship if the present waiver application is denied. Although the applicant's wife indicated that she suffers from Endometriosis, the applicant has not provided medical documentation that shows that she continues to suffer symptoms of this condition that create hardship for her or require his assistance. The single document suggesting she experienced health challenges stated that she was free to return to work or school with no limitations on January 2, 2006. The applicant has not submitted any medical documentation that suggests his wife has suffered symptoms in the last five years, or that shows her health would contribute to her hardship should she relocate to Burkina Faso or remain in the United States.

The applicant has not shown that his stepdaughter suffers from ongoing health problems or that she requires unusual medical care. While his stepdaughter is not a qualifying relative under section 212(i) of the Act, the AAO considers her hardship to determine the impact it would have on the applicant's wife. Yet, as the provided medical records do not reflect that she has had any recurrence

of seizures or required follow-up care since December 11, 2007, the applicant has not shown that his stepdaughter would experience health problems in the United States or Burkina Faso that would elevate his wife's challenges to an extreme level.

The applicant has not provided sufficient documentation or explanation to show the economic circumstances his wife would face in his absence. Counsel stated that the applicant's wife was able to attend school, yet the applicant has not indicated whether his wife obtained a degree or vocational skills that would allow her to obtain employment should she no longer work for the family tire and automotive parts business. Nor has the applicant provided sufficiently detailed information about his business to show whether he can hire another individual to perform the tasks he presently provides. The record does not show the applicant's wife's expenses. The applicant has not shown that his wife would face significant economic hardship should she reside in the United States without him.

The AAO acknowledges that economic conditions in Burkina Faso are substantially less favorable than those in the United States, and that the applicant's wife would face financial challenges in relocating there. It is understood that a lack of language skill or experience with the local culture would contribute to her difficulty, and that she would share in the challenges faced by her daughter. However, the applicant has provided only general assertions regarding his wife's difficulty should she reside there. The AAO has assessed the reports on Burkina Faso submitted by the applicant, yet the applicant has not shown that all individuals who reside in the country experience extreme hardship. The applicant has not indicated whether he has friends or family in Burkina Faso who could assist him and his wife should they reside there. Thus, while the applicant's wife would endure hardship in Burkina Faso, the record is not sufficient to show that she would suffer extreme hardship there.

It is evident that relocating to a less-developed country or becoming separated from a spouse often results in significant emotional hardship. However, the applicant has not shown that his wife would face psychological consequences that can be distinguished from those commonly faced by the spouses of inadmissible individuals.

The applicant has not identified other elements of hardship his wife may face should he reside outside the United States. Considering the stated hardship factors in aggregate and in light of the lack of supporting evidence in the record, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his wife. Thus, he has not shown that he is eligible for a waiver under section 212(i) of the Act. As the applicant is not eligible for a waiver under 212(i), no purpose would be served in conducting a detailed analysis of his criminal conviction and eligibility for a waiver under section 212(h) of the Act. Nor would a purpose be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.