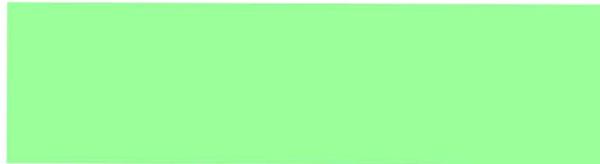




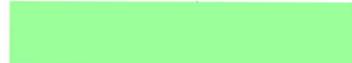
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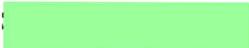


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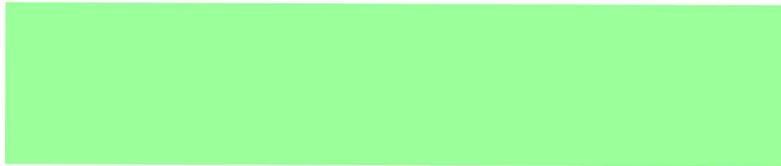


IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (a)(9)(B)(v) respectively

ON BEHALF OF APPLICANT:



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 AAO inappropriately applied the law 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 with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the United Kingdom 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 crimes involving moral turpitude. The record shows that the applicant was also found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking readmission within 10 years of his last departure from the United States. The applicant was further found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed under any provision of law and seeking admission within 10 years of the date of his departure or removal. The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h), (a)(9)(B)(v), in order to reside in the United States with his U.S. citizen wife.

In a decision dated August 17, 2011, the district director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that his U.S. citizen wife would experience extreme hardship as a consequence of his inadmissibility.

On appeal, counsel for the applicant asserts that the district director erred by not applying the extreme hardship standard under section 212(h)(1)(B) to the facts of the applicant's case. Counsel further indicated that the district director failed to consider the record as a whole. Additionally, counsel avers that the "abundance of documentary evidence" outlining emotional and medical difficulties demonstrate extreme hardship to the applicant's U.S. citizen wife.

The record contains, but is not limited to: counsel's brief, a statements by the applicant, a hardship statement by the applicant's wife, two medical letters concerning the applicant's leukemia diagnosis in 2001, a social worker report referencing the asserted hardships upon the applicant's qualifying relative, medical reports, a letter by the applicant's wife's daughter, character reference letters, documentation regarding the applicant's expedited removal proceeding, and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, 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 –
 - (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 Board of Immigration Appeals (Board) 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.)

The record shows that on [REDACTED] 2006, the New York State Court of Appeals upheld the applicant's [REDACTED] 2003 conviction of one count first degree conspiracy and sixteen counts of "falsifying business records, first degree." The applicant was sentenced to five years of probation and was fined \$6,000. The record further shows that on November 13, 2007, the applicant was convicted in the [REDACTED] of "assisting another to retain control or benefit of criminal conduct." The applicant was sentenced to an 18 month term of imprisonment suspended for two years, and he was disqualified from being a company director for seven years. The field office director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. Counsel concedes in his brief that the applicant's convictions render him inadmissible as an alien who has been convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility from these convictions on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the district director.

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 district director also found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having accrued unlawful presence in the United States in excess of one year. The record of

proceedings indicates that the applicant entered the United States on March 10, 2001, at the Miami International Airport pursuant to the Visa Waiver Program. The applicant was given permission to remain in the United States until June 9, 2001. On June 28, 2001, an I-129 Petition for Nonimmigrant Worker was filed naming the applicant as the beneficiary. The Form I-129 was approved on July 25, 2001, erroneously granting the applicant nonimmigrant L-1 status. See 8 C.F.R. § 248.2(a)(6) (providing that any alien admitted as a Visa Waiver Program visitor is ineligible to change their nonimmigrant status). On July 9, 2002, the applicant filed for an extension of his L-1 visa, which was denied on February 17, 2006. The applicant was removed from the United States on March 28, 2006 under the expedited removal provisions set forth in sections 217(b) and 235(b)(1) of the Act.

The AAO begins its analysis by noting that a waiver under sections 212(h)(1)(B) and 212(a)(9)(B)(v) is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). In this case, the applicant asserts that denial of his admission will impose extreme hardship upon his U.S. citizen wife. The applicant's U.S. citizen wife constitutes a qualifying relative for purposes of the section 212(h) waiver of inadmissibility.

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 the 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 is 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 asserted hardship factors in this case are the medical and emotional hardships to the applicant’s wife if she remains in the United States without him and if she relocates to the United Kingdom to reside with the applicant. On appeal, counsel for the applicant asserts that the record evidence demonstrates that the applicant’s wife is experiencing serious medical conditions and that she would experience extreme emotional hardship if she relocates to the United Kingdom, as relocation would likely result in separation from her daughter.

The record contains an undated declaration by the applicant’s wife in which she indicates that she has been diagnosed with Hashimoto Disease, hormonal deficiencies, arthritis, and osteopenia. In a letter dated [REDACTED] states that he has treated the applicant’s wife since December 2004 and that she has been diagnosed with hypothyroidism, low back pain, arthritis, ovarian dysfunction, and hyperlipidemia. [REDACTED] indicates that these medical conditions are in need of periodical medical care. In a letter dated August 5, 2009 by [REDACTED] states that the applicant’s wife has been diagnosed with an abnormal thyroid function. Dr. [REDACTED] indicates that the correct course of action to combat this condition is a course of antibiotics and “other minor adjustments to [her] treatment protocol.” The applicant furnished copies of medications prescribed to his wife used to treat low thyroid levels and to raise “good-cholesterol.”

Here, the AAO acknowledges the applicant’s wife’s statements on appeal regarding her medical conditions. However, the current documentation submitted as part of the record is not sufficient to

support the applicant's wife claim that her medical conditions would cause her extreme hardship if the applicant is denied admission or if she relocates to the United Kingdom. For instance, [REDACTED] does not address in his letter the severity or the specific medical treatment the applicant's wife requires for these conditions. Thus, the letter does not provide enough detail about the severity or recurrence of her conditions for the AAO to make a determination as to whether the conditions would cause extreme hardship. Further, the applicant's wife has not asserted, and the record evidence does not otherwise demonstrate that her conditions require daily care or that she depends upon the applicant for her treatment and medical appointments. Additionally, the record evidence does not indicate that the applicant's wife would be unable to receive comparable medical care in the United Kingdom, or that she will be unable to receive treatment for her conditions in that country. The record does not show that country conditions in the United Kingdom are such that she will be exposed to inferior medical facilities in that country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567 (stating that a section 212(h) waiver should be granted only in cases where "great or actual prospective injury" or "extreme impact" to the qualifying relative will occur). Rather, the record evidence suggests that the applicant is the beneficiary of a universal health care plan which, presumably, would also cover the applicant's wife medical treatment in the event of relocation.

The applicant's wife indicates on appeal that her greatest concern in the event of relocation is her daughter. She states that her daughter has been diagnosed with several severe ailments that have required multiple medical interventions and surgery; and that as a result of these medical ailments, her daughter experiences post traumatic syndrome, deep anxiety and depression. The applicant's wife indicates that she has taken care of her daughter during her hospital stays, and that, though her daughter lives in Colorado and she resides in Florida, "she was with her [daughter] at the hospital the entire month she was there." The applicant's wife asserts that her daughter is "precious to [her] and not being physically accessible to her [daughter] is of great concern to [her]."

Here, the AAO is sympathetic to the applicant's wife's circumstances and her desire to care for her daughter should the need arise; however, the record evidence is insufficient to demonstrate extreme hardship to the applicant's qualifying relative. First, it is noted that Congress did not include hardship to a qualifying relative's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's wife is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse. Further, the record does not contain any evidence indicating that the applicant's wife's daughter depends on the applicant's wife for her daily care. Furthermore, the record evidence indicates that the applicant's daughter has immediate family close to her in Colorado willing and able to assist in her care. The AAO acknowledges that the applicant's wife will experience emotional difficulties if she relocates to the United Kingdom, but the record does not demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's wife, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). Put another way, while it is understood that the separation of immediate relatives often results in emotional challenges, the

applicant has not distinguished his wife's emotional hardship upon separation from her daughter from that which is typically faced by the qualifying relatives of those deemed inadmissible.

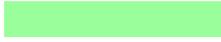
The applicant's wife asserts in her declaration that the applicant has "gone through tremendous hardship as well" and "was diagnosed with leukemia" in 2001. The record evidence indicates that though the applicant was diagnosed with the aforementioned condition in 2001, it also establishes that the applicant's condition is in remission. The AAO again notes that that Congress did not include hardship to the applicant as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act, and that hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative.

In letters and statements from the applicant, his wife and friends of the family, it is asserted that the applicant's wife has a good, stable relationship with the applicant and that she depends upon him for emotional and psychological support. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant and his wife, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship.

Lastly, like the Board in *Matter of Cervantes-Gonzalez*, the AAO notes that the applicant's wife knew that the applicant was removed from the United States at the time they were married. 22 I&N Dec. at 566-67. The Board has stated that this factor goes to the applicant's wife's expectations at the time they were wed. *Id.* As such, the applicant's wife was aware that she may have to face the decision of parting from the applicant or following him to the United Kingdom. In this latter scenario, the applicant's wife was also aware that a move to the United Kingdom would separate her from her brother and his family, who reside in Florida, and her daughter, who resides in Colorado. Like the Board in *Cervantes-Gonzalez*, the AAO finds this to undermine the assertion that the applicant's wife will experience extreme hardship in the event of separation and relocation. *See id.* at 567; *see also Shooshtary v. INS*, 39 F.3d 1049, 1051 (9th Cir. 1994) (holding that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported); *Silverman v. Rogers*, 437 F.2d 102, 107 (1st Cir. 1970) (stating that "(e)ven assuming that the federal government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States").

The documentation in the record therefore fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.



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ORDER: The appeal is dismissed.