

U.S. Citizenship
and Immigration
Services



PUBLIC COMMENT

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prevent clearly unwarranted
disclosure of personal information

WA

[Redacted]

FILE:

[Redacted]

Office: CHICAGO, IL

Date:

JUN 15 2004

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act; 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Mexico 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 (Retail Theft and Burglary). The applicant is married to a U.S. citizen, and he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States with his U.S. citizen wife and adjust his status to that of a lawful permanent resident.

The district director found the applicant had failed to establish that extreme hardship would be imposed upon his wife. The waiver of inadmissibility application was denied accordingly.

On appeal, counsel concedes that the applicant was convicted of retail theft in 1991, and of burglary in 1993. Counsel asserts, however, that neither crime constitutes a crime involving moral turpitude. Counsel asserts further that, in the event that the applicant's convictions are crimes involving moral turpitude, the applicant has established that his U.S. citizen wife would suffer extreme financial and emotional hardship if she remained in the U.S. without the applicant or if she moved with the applicant to Mexico.

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

(2) Criminal and related grounds.-

(A) Conviction of certain crimes.-

(i) In general. -Except as provided in clause (ii), any 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 released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of 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 AAO finds counsel's assertion that the applicant's theft and burglary convictions do not constitute crimes involving moral turpitude (CIMT) to be unconvincing. Counsel provides the following definition for theft under 720 ILCS 5/16-1:

Theft. (a) A person commits theft when he knowingly:

- (1) Obtains or exerts unauthorized control over property of the owner; or
- (2) Obtains by deception control over property of the owner; or
- (3) Obtains by threat control over property of the owner; or
- (4) Obtains control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen, and
 - (A) Intends to deprive the owner permanently of such use or benefit; or
 - (B) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or
 - (C) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit, or
- (5) Obtains or exerts control over property in the custody of any law enforcement agency which is explicitly represented to him by any law enforcement agency or any individual acting in behalf of a law enforcement agency as being stolen.

Counsel asserts that the applicant's 1991 retail theft conviction under 720 ILCS 5/16-1, is not a CIMT because the statutory definition does not explicitly include an element of dishonesty, and because it is unclear exactly how the applicant obtained control of property. The AAO notes that counsel provides no specific legal evidence to support his assertions. Moreover, the AAO finds that "[i]t is well settled that theft ... whether grand or petty, has always been held to involve moral turpitude." *Matter of Scarpulla*, 15 I&N Dec. 139, 140-41 (BIA 1974) (Citations omitted).

Regarding the applicant's conviction for burglary, counsel provides the following definition for burglary under 720 ILCS 5/19-1:

- Burglary. (a) A person commits burglary when without authority he enters knowingly or without authority remains within a building, house trailer, watercraft, aircraft, motor vehicle as defined in the Illinois Vehicle Code, railroad car, or any part therefore, with intent to commit therein a felony or theft . . .
- (b) Sentence. Burglary is a . . . felony.

Counsel asserts that burglary is not a CIMT because the definition does not include elements of fraud, dishonesty, malicious intent or threatening behavior. Counsel asserts further that the charging and conviction documents against the applicant do not provide specific details about the applicant's crime, and instead refer only to the crime as a burglary.

The AAO finds that the definition of burglary set forth in 720 ILCS 5/19-1 inherently involves moral turpitude. The AAO notes that, "[b]urglary (with intent to commit theft) is a crime involving moral turpitude." See *Matter of M-*, I&N Dec. 721 (BIA 1982). The AAO notes further that in *Matter of M-*, *supra* at 722, the Board of Immigration Appeals (Board) indicated that, in general, burglary, defined as the breaking and entering of a dwelling house of another in the nighttime with intent to commit a felony, constitutes a CIMT.

Based on the above reasoning, the AAO finds that the applicant has been convicted of two crimes involving moral turpitude. The applicant is therefore ineligible for the exceptions provided for in section 212(a)(2)(A)(ii) of the Act, and is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

(h) The Attorney General [now the Secretary 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 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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The factors included the presence of a lawful permanent resident or United States citizen spouse or parent [or child] 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. In *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), the BIA held that "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). However, U.S. court decisions have also repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship.

On appeal, counsel asserts the applicant's wife, [REDACTED] will be separated from her immediate family if she moves to Mexico with the applicant, and that she would have difficulty adjusting to life in Mexico. Counsel additionally asserts that [REDACTED] would suffer hardship in Mexico because health conditions and services in Mexico are inferior to those in the United States. On the other hand, counsel asserts that Mrs. [REDACTED] will suffer extreme hardship if she remains in the U.S. without the applicant, because she will be separated from her husband and because she is unaccustomed to working and would not be able to pay the debts that she and the applicant presently owe.

The AAO finds that counsel's assertions as to the emotional, family-related and health-related hardship that [REDACTED] would suffer are baseless and unsupported by any evidence or documentation in the record. The AAO notes that the record contains no affidavits or statements from [REDACTED] regarding the hardship she would suffer if the applicant were removed to Mexico. Moreover, the only hardship-related document submitted by the applicant relates solely to the amount of debt he and his wife presently owe. The AAO notes that the record additionally contains no information or evidence relating to general health

conditions in Mexico, or how they would affect [REDACTED] if she were to move to Mexico. Moreover, the record contains no information or evidence describing or proving in specific terms, the nature of the emotional hardship that [REDACTED] would suffer if she remained in the U.S. and were separated from her husband.

In addition, the AAO finds counsel's assertion that [REDACTED] is unaccustomed to working to be unsupported by the evidence in the record. The record reflects that [REDACTED] completed the Immigration and Naturalization Service Affidavit of Support for her husband when she filed his adjustment of status application in 2000. The AAO notes further that [REDACTED] 1997 through 1999 income tax records indicate that she worked full-time and earned over \$30,000 during those years. Based on the evidence in the record, [REDACTED] consistently earned a much higher income than did the applicant. Moreover, the record indicates that [REDACTED] attended Devry Institute of Technology between 2001 and 2003, thus indicating that the reason she temporarily stopped working, was to educate herself further in the field of technology – presumably for work-related purposes.

In addition to the above assertions, counsel asserts that [REDACTED] will suffer extreme financial hardship if the applicant is removed from the United States. The AAO notes that the record contains financial documentation indicating the applicant and [REDACTED] have a home mortgage and automobile loan debt, and that they owe money for school loans, insurance and miscellaneous credit card bills. The AAO finds, however, that “[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.” *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his wife would suffer extreme hardship if his waiver of inadmissibility application is denied. Having found the applicant ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) 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.