

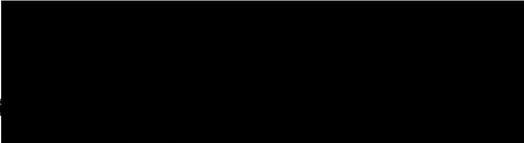
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H2

FILE: 

Office: ROME, ITALY

Date: AUG 22 2005

IN RE: 

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) and § 1182(i)

ON BEHALF OF APPLICANT:



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, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa and admission to the United States by fraud or willful misrepresentation, and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(i)(I), for admitting to the essential elements of a crime involving moral turpitude. The applicant's mother is a lawful permanent resident and he seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and § 1182(i), in order to reside in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 6, 2003.

On appeal, counsel asserts that the applicant is not inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, that the district director made erroneous findings of fraud, that the applicant's mother would suffer extreme hardship pursuant to sections 212(h), if applicable, and 212(i) of the Act and that the applicant warrants a favorable exercise of discretion. *See Brief in Support of Appeal*, undated.

In support of these assertions, counsel submits the aforementioned brief. The record includes previously submitted documents including, but not limited to, a psychological evaluation for the applicant's mother, court and investigation records from a relevant court case, applicant's business plan for a U.S. auto dealership, medical records for the applicant's mother and the 2001 U.S. Department of State Country Reports for Iran. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) 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.

Section 212(i) of the Act provides that:

- (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.

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.

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

(h) The Attorney General [now, Secretary, 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.

The record indicates that the applicant obtained an L-1 visa through fraudulent means and entered the United States with that visa in 1987. The fraudulent visa was issued for a supposed job with British Petroleum in a non-existent Miami office. Approximately 50 other people received fraudulent L-1 visas as part of this same fraudulent scheme for which the organizer was prosecuted and found guilty. The applicant subsequently failed to mention his relevant immigration history in a 1990 visitor visa application and his December 2001 immigrant visa interview. Therefore, the district director made three findings of inadmissibility pursuant to section 212(a)(2)(A) of the Act. *Decision of the District Director*, at 1. Based on the applicant's L-1 visa issue, the district director determined that the applicant admitted the essential elements of a crime(s) involving moral turpitude, particularly sections 1001(a) and 1546(a) of Title 18 of the United States Code (the Code).

Section 1001(a) of Title 18 of the Code provides, in pertinent part, that:

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than 5 years, or both.

Section 1546(a) of Title 18 of the Code provides, in pertinent part, that:

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained . . . shall be fined under this title or imprisoned not more than 10 years, or both.

Counsel's first assertion is that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act as the consular office did not establish that the applicant has admitted the commission of the essential elements of the aforementioned crimes. *See Brief in Support of Appeal*, at 2. Counsel refers to the requirements needed to support a finding of an admission of committing the essential elements of a crime involving moral turpitude as found in the Department of State Foreign Affairs Manual (FAM).

Section 40.21(a), Note 5.1 of Title 9 of the FAM states, in pertinent part, that:

If it is necessary to question an alien for the purpose of determining whether the alien is ineligible to receive a visa as a person who has admitted the commission of the essential elements of a crime involving moral turpitude, the consular officer shall make the verbatim transcript of the proceedings under oath a part of the record. In eliciting admissions from visa applicants concerning the commission of criminal offenses, consular officers shall observe carefully the following rules of procedure:

- (1) The consular officer shall give the applicant a full explanation of the purpose of the questioning. The applicant shall then be placed under oath and the proceedings shall be recorded verbatim.
- (2) The crime, which the alien has admitted, must appear to constitute moral turpitude based on the statute and statements from the alien. It is not necessary for the alien to admit that the crime involves moral turpitude.
- (3) Before the actual questioning, the consular officer shall give the applicant an adequate definition of the crime, including all essential elements. The consular officer must explain

the definition to the applicant in terms he or she understands, making certain it conforms to the law of the jurisdiction where the offense is alleged to have been committed.

- (4) The applicant must then admit all the factual elements which constituted the crime.
- (5) The applicant's admission of the crime must be explicit, unequivocal and unqualified.

The record does not reflect that the district director followed any of the necessary procedures required under FAM in order to find that the applicant admitted the commission of the essential elements of a crime(s) involving moral turpitude. The AAO notes that these procedures are in place for important policy reasons. The applicant has not been the subject of any criminal proceedings and to make a finding of an admission to commit the essential element of a crime(s) resulting in inadmissibility requires due process under FAM. The district director makes a series of statements and conclusions in order to find an admission to commit the essential elements of a crime(s) involving moral turpitude without regard to procedure. *Decision of the District Director*, at 1-2. Therefore, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Counsel's second assertion is that the district director made erroneous findings of fraud. *See Brief in Support of Appeal*, at 8. In regard to the applicant's L-1 visa application and entry, counsel makes a series of assertions. Counsel states that the applicant did not know the requirements for an L-1 visa, did not have a role in procuring the initial L-1 approval in Miami, was told he had a legitimate offer of employment with British Petroleum, did not personally appear for the interview in London and did not pay for the visa. *Id.* at 9-10. However, counsel also states that the applicant admitted to obtaining a fraudulently procured visa, but the degree of knowledge about the scheme was minimal. *Id.* at 10. The issue in determining inadmissibility under section 212(a)(6)(C)(i) of the Act is whether the applicant misrepresented information or committed fraud, not the level of the applicant's participation in a massive visa fraud case. Therefore, the record indicates that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act in regard to his 1987 visa application and entry to the United States.

Counsel states that the U.S. Attorney's Office will provide information regarding the applicant's cooperation in the L-1 visa fraud case. *Id.* at 11. Counsel also states that the applicant's role was viewed by the U.S. Attorney's Office and the legacy Immigration and Naturalization Service (INS) as minimal due to the fact that his visa was not cancelled and he was not placed in deportation proceedings. *Id.* at 12-13. Counsel asserts that the applicant's motivation to come to the United States was to protect his family. *Id.* at 13. The AAO notes that the weight of these assertions are relevant to a discretionary granting of a 212(i) waiver that is performed only upon an initial finding of extreme hardship. Lastly, counsel states that government policy is to disregard entry fraud in making waiver determinations under section 212(i) of the Act and that the district director's reliance on this entry was erroneous. *See id.* at 9. The AAO notes that a waiver under section 212(i) of the Act is discretionary and the applicant's immigration history is a relevant discretionary factor.

In regard to the district director's finding of inadmissibility for the applicant's 1990 visa application in Dubai, counsel states that the applicant simply failed to disclose information that was not requested on the Form OF-156, Nonimmigrant Visa Application. *See id.* at 14-15. The AAO finds this contention to be inaccurate as Form OF-156 specifically asks if the applicant has sought to obtain entry into the United States by fraud or

willful misrepresentation. The record does not include a copy of the applicant's 1990 visa application and the district director infers that the applicant failed to disclose his prior misrepresentation when applying for the visa. *Decision of the District Director*, at 1. Although inclined to agree with the finding of the district director, absent evidence in the form of the visa application, the AAO cannot find grounds of inadmissibility based on the 1990 visa application.

In regard to the 2001 immigrant visa interview, the district director claims that the applicant represented that he had previously possessed a legitimate work visa with British Petroleum. *Id.* Counsel asserts that the applicant was instructed by the U.S. Attorney not to mention his appearance before the grand jury in the L-1 visa fraud case to anybody, therefore, it was reasonable for the applicant to believe that failure to comply with these instructions would result in a breach of his qualified immunity agreement. *See Brief in Support of Appeal*, at 16. The record includes evidence that the applicant appeared before a grand jury on July 8, 1988. The record does not include evidence that the applicant was sworn to secrecy. Furthermore, in relation to grand juries, Rule 6(e)(2)(a) of the Federal Rules of Criminal Procedure states that no obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B). A witness is not listed in the exceptions of Rule 6(e)(2)(B). Counsel states that the applicant was so concerned about disclosing the findings of the L-1 visa investigation to the legacy INS that he requested counsel to contact the U.S. Attorney's Office to secure permission to disclose the information. *See id.* at 17. The AAO finds this assertion to be disingenuous as the applicant should have sought this permission prior to his immigrant visa interview and had 13 years to do so. Furthermore, the applicant indicated in his immigrant visa interview that he actually had a legitimate work visa for British Petroleum and he worked with them as an independent contractor. Therefore, the AAO upholds the third finding of inadmissibility based on misrepresentation.

Counsel asserts that the district director failed to properly consider and analyze the evidence as it related to the factors demonstrating extreme hardship to the applicant's mother. *Id.* at 6. The precedent case used to determine extreme hardship is *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). Therefore, an analysis under the factors mentioned in *Matter of Cervantes-Gonzalez* is appropriate for this decision and the district director erred in stating that, "The case is not relevant here." *Decision of the District Director*, at 3. Counsel makes several assertions regarding discretion, however, the weighing of discretionary factors need only be done upon a finding of extreme hardship.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

The record indicates that the applicant's mother has three U.S. citizen sons and six U.S. citizen grandchildren residing in the United States. The record does not indicate whether the applicant's mother has any family ties outside of the United States. The record includes the 2001 U.S. Department of State Country Reports for Iran which details numerous human rights violations, gender discrimination, restrictions on free speech and

political persecution. The record does not state the extent of the applicant's mother's ties to Iran, if any, but counsel states that the applicant's mother fears detention upon return to Iran based on her late husband's ties to the late Shah Pahlevi and due to her late husband's political and business success. *See Initial Brief*, at 17-18, dated February 21, 2003. However, this claim is undermined as the record indicates that the applicant is successfully running his late father's business and there is no evidence of retaliation from the current government based on this. *Id.* at 9. Counsel does not address the financial impact of departure from the United States. Counsel states that the applicant's mother is sixty-nine years old and suffers from coronary disease, asthma, a thyroid condition, major depressive disorder, anxiety and a panic disorder. *Brief in Support of Appeal*, at 4. Counsel states that the legacy INS attempts to minimize the diagnosis of the psychologist by stating that admitting the applicant would not necessarily allay her fear and anxiety. *Id.* at 6. With the exception of the applicant's mother's asthma condition, the record does not indicate that the applicant's mother has an ongoing relationship with a doctor or psychologist who provides her with treatment for her conditions. In fact, the psychological report was from a one-time meeting and there is no mention of a plan of treatment.

Counsel asserts that the district director's presumption that the medical problems of the applicant's mother could not be fully remedied by admission of the applicant misses the point. *Supra.* at 5. The AAO agrees that it is nonsensical to state that all of the medical problems of the applicant's mother could not be remedied through admission of the applicant. Counsel contends that the district director failed to consider the precarious health conditions that make travel exceedingly difficult for the applicant's mother. *Id.* at 6. The psychologist's report indicates that the applicant's mother has not been able to travel to Iran and had serious asthma problems while on a two day trip to California, however, the district director's suggestion of meeting outside of the United States, but close to Miami, is reasonable.

The applicant is required to show extreme hardship to his mother in the event that she relocates to Iran or in the event that she remains in the United States without him. The applicant has not shown that his mother will suffer extreme hardship in the event that she remains in the United States with access to medical care and financial support from her family.

U.S. court decisions have 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, *Matter of Pilch* 21 I & N, Dec. 627 (BIA 1996) held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further 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.

Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant and is sympathetic to her situation. However, her situation, based on the

record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother 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 application for waiver of grounds of inadmissibility under section 212(i) 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.