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PETITION: 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 PETITIONER:



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

The applicant is a native and citizen Colombia who was found to be inadmissible to the United States under 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. The applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her spouse.

The district director, in considering the requested waiver, found that the applicant had failed to establish that her spouse would experience extreme hardship. The district director denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 12, 2003. Counsel then filed the instant appeal accompanied by additional evidence.

On appeal, counsel contends that the district director erred in denying the waiver application. The major contention raised is that the applicant was not convicted of a crime involving moral turpitude. Counsel, in passing, also takes issue with the district director's finding that the applicant had not demonstrated extreme hardship, and offers additional evidence. This evidence is in the form of a letter from the applicant's spouse and one from Barry University School of Law indicating that the spouse has been accepted into law school. The entire record was considered in rendering a decision on the current appeal.

The record reflects that the applicant is a thirty-one-year-old native and citizen of Colombia. She claims to have last entered the United States at San Ysidro, California on or about April 15, 1998, after presenting a Florida driver's license. While living in the United States during the early 1990's, the applicant was convicted of Conspiracy to Pass and Utter Falsely Made and Counterfeited Obligations in violation of 18 U.S.C. §§ 472 & 371. The applicant's conviction occurred on October 21, 1993, and she subsequently departed the United States. She married her U.S. citizen spouse in Colombia on January 23, 1996. Her spouse subsequently filed a Petition for Alien Relative (Form I-130), which was approved on April 8, 1996. The applicant filed an application for Adjustment of Status (Form I-485) on June 29, 2001, and simultaneously filed the Form I-601 seeking to waive the ground of inadmissibility relating to her conviction. The waiver application was denied for the reasons previously stated, and the instant appeal followed.

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-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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) . . . 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 applicant was convicted of the crime specified above. Counsel contests that the applicant's conviction was not for a crime involving moral turpitude, arguing that a conspiracy and the related substantive offense are "separate and distinct crimes." See *Form I-290B*, dated July 10, 2003. Counsel further states that the crime of conspiracy, by its nature, is a crime of unlawful agreement, and does not share the characteristics of a crime involving moral turpitude which counsel states has been defined as conduct which shocks the conscience or is per se morally reprehensible, intrinsically wrong, or malum in se. See *Form I-290B*, date July 10, 2003, citing *Matter of Franklin, Int. Dec. #3228 (BIA 1994)*. While counsel contends that the conspiracy offense is not a crime involving moral turpitude, counsel does not reference any cases that have made such a finding.

On the contrary, the AAO's review of the cases in this area discloses that the Board of Immigration Appeals (BIA) and the courts have rejected the contention that conspiracy offenses do not constitute crimes involving moral turpitude. The critical issue, as demonstrated by the cases, is whether fraud is a central component of the offense. The court in *Omagah v. Ashcroft*, 288 F.3d 254 (5th Cir. 2002) considered the alien's claim that his conviction for conspiracy to obtain, possess, and use forged, counterfeited, and falsely made immigration documents in violation of 18 U.S.C.S. § 371 was not a conviction for a crime involving moral turpitude. Although the alien in *Omagah* was convicted under the same conspiracy statute as the applicant before the AAO, the court found that it was appropriate to examine the offense underlying the conspiracy offense "because § 371 generically prohibits conspiring to 'defraud' or 'commit an offense against' the United States." *Omagah*, at 260. The court upheld the BIA's decision to classify, as an offense involving moral turpitude, conspiracy to possess illegal immigration documents with the intent to defraud the government, noting that it would have been reasonable as well for the BIA to have found the other offenses under 18 USC 1546 to be crimes involving moral turpitude, as each of those offenses, likewise, involved fraud.¹ The AAO therefore, rejects the applicant's assertion that the only type of conspiracy offense that can be classified as a crime involving moral turpitude is the offense of conspiracy to violate any law or regulation relating to a controlled substance. According to counsel, this offense is "the only qualifying type of conspiracy."²

Having determined that the caselaw supports a finding that a conviction for a conspiracy offense is a conviction for a crime involving moral turpitude if the underlying offense involves a fraud offense, the AAO next examines cases that have specifically addressed convictions for the possession, uttering and passing of falsely made or counterfeit obligations, the underlying offense. The BIA in *Matter of P--*, 6 I&N Dec. 795 (BIA 1955), held that an alien's conviction for "publishing, uttering, and passing counterfeit Federal Reserve

¹ The statute at issue in *Omagah*, 18 U.S.C. § 1546, prohibited: (1) simple, knowing possession of illegal documents, (2) possession of illegal documents with an intent to use them, and (3) forgery of illegal documents.

² Counsel's argument is based upon a mistaken reading of the statutory language of section 212(a)(2)(II) of the Act wherein the language specifically states that violations of controlled substance laws, or conspiracies or attempts to violate controlled substance laws. Counsel asserts that because that is the only provision that specifically endorses a conspiracy offense, it is the only type that qualifies as a CIMT. However, section 212(a)(2)(II), is a subsection separate and distinct from an offense for a CIMT under 212(a)(2)(I). Under subsection II, an alien is removable on account of the controlled substance conviction (including conspiracies and attempts), not due to a CIMT conviction.

Notes with intent to defraud in violation of 18 U.S.C. 265 (now 18 U.S.C. § 472) was a conviction for a crime involving moral turpitude. At least two circuit courts have held that a conviction for possession of counterfeit obligations of the United States with intent to defraud constitutes a conviction for a crime involving moral turpitude. See *Lozano-Giron, v. INS*, 506 F.2d 1073 (7th Cir. 1974); *Janvier v. U.S.*, 793 F.2d 449 (2d Cir. 1986). The record in the instant case, including the conviction records submitted by the applicant reflect that she was convicted of the successor statutory provision--an offense that involved acting knowingly and with an intent to defraud. The AAO concludes, therefore, that the applicant has been convicted of a crime involving moral turpitude.

The AAO turns next to counsel's assertions as to the second contention of error by the district director, i.e., that the district director incorrectly found that the applicant had not established extreme hardship. The evidence before the district director consisted only of a letter from the applicant's spouse. See *Decision of the District Director*, dated June 12, 2003. That letter states that that the two were "very much a strongly attached married couple" and that the U.S. citizen spouse "depend[s] on her for emotional support...[and] would be devastated if she were not able to remain here with me as a Legal Permanent Resident." See *Letter from* [REDACTED] undated. No other evidence was offered. On appeal, counsel offers two additional documents. The first document is a second letter from the applicant's spouse in which he states that he had been accepted into law school and would be attending Barry University School of Law beginning in August of 2003. He also states that his father recently had died, and that his mother relies upon him for support. The spouse contends that while he is in law school, his wife will be supporting him as well as his mother, and it would pose an extreme hardship if they were unable to obtain her support. See *Letter from* [REDACTED] dated July 9, 2003. As evidence of his admission into law school, the applicant's spouse attached a copy of his letter of admission to the law school.

A waiver of the bar to admission to the United States is dependent upon the alien's showing that the bar imposes an extreme hardship on a qualifying family member. Congress provided this waiver but limited its application. By this limitation, it is evident that Congress did not intend that a waiver be granted merely due to the fact that a qualifying relationship exists. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the United States citizen or permanent resident will the bar be removed. Common results of the bar, such as separation, financial difficulties, and such, in themselves are insufficient to warrant approval of an application unless combined with more extreme impacts. See *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) 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 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."

The only evidence in the record supporting the applicant's request for a waiver consists of the statements submitted by the applicant's spouse asserting that he would suffer emotional distress and financial hardship should the applicant's waiver application were denied.

Counsel asserts that the evidence offered supports the claim that the applicant's spouse would experience extreme hardship. The AAO finds the evidence to be insubstantial and unconvincing. While the AAO has no reason to question any of the assertions contained in the letter, those assertions are insufficient to demonstrate extreme hardship. There are no unique circumstances set forth which would indicate that the hardship that that the applicant may encounter would be considered extreme. The assertions as to any financial hardship are general in nature and are largely unsupported by the evidence in the record. It is also worth noting that the applicant's spouse submitted an Affidavit of Support (Form I-134) pledging to financially support the applicant during the course of her application for lawful permanent residence. Along with the Form I-134, the spouse submitted a copy of the couple's tax return, which indicated that the couple's income resulted only from his employment. The applicant's occupation was listed as "Housewife." While certainly, the applicant may now be employed and contributing to the support of the family, no evidence of such employment has been submitted. Furthermore, the AAO notes that although the applicant's spouse may be going to law school, there is no evidence that he explored options such as attending night school to ameliorate any financial hardship. Furthermore, even if this were not possible, the AAO does not believe that the spouse's financial hardship would constitute extreme hardship.

U.S. court decisions have repeatedly held, however, 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. Moreover, 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.

A review of the record, when considered in its totality, reflects that the applicant has failed to show that her spouse would suffer extreme hardship if her waiver of inadmissibility application were 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 an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden.

ORDER: The appeal is dismissed.