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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: PHILADELPHIA Date: NOV 19 2007

IN RE: [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, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Mali 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 committed crimes involving moral turpitude. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse, [redacted] a U.S. citizen. At the time of submission of the appeal, they had two U.S. born children, with the birth of a third child expected in February 2006. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and children.

The applicant and his spouse were married in the United States on May 21, 1999. The applicant's spouse filed the Form I-130 on February 29, 2000. It was approved on February 27, 2002. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on August 3, 2004. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 15, 2005.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated October 4, 2005.

On appeal, counsel contends that the applicant has asserted that his convictions were not crimes involving moral turpitude. Counsel also asserts that the district director failed to consider all the relevant hardship factors in denying the waiver application. Counsel contends that not only did the district director focus only on economic hardship, but he also failed to properly consider the full financial impact of denying the waiver application. Counsel asserts that the district director failed to properly weigh the emotional hardship of separating the applicant from his spouse and children, and, in the alternative, the hardship the applicant's spouse and children would experience attempting to adjust to life in Mali.

The record includes legal briefs from counsel; an affidavit from the applicant's spouse; country conditions reports for Mali; court records; medical, financial and tax records; birth and marriage certificates and family photographs. The entire record has been reviewed in rendering a decision on the appeal.

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

> (i) In general.— . . .[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.

The AAO notes that the Board of Immigration Appeals 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).

Court documents in the record reflect that the applicant was convicted in New Jersey Superior Court, Criminal Law Division on March 27, 1996 of a third degree violation of section (c)(2) of chapter 21 of the New Jersey Code of Criminal Justice and sentenced to four years of probation. *See* N.J. Stat. § 2C:21-21 (1995). This section of law, part of the "New Jersey Anti-Piracy Act," provided at the time of the applicant's conviction that a person commits a crime who "knowingly transports, advertises, sells, resells, rents, or offers for rental, sale or resale, any sound recording or audiovisual work that the person knows has been produced in violation of act." *Id.*

The applicant was also convicted in Philadelphia Municipal Court on February 3, 1997 of violating sections 4116 (Copying) and 903 (Conspiracy) of Title 18 of the Pennsylvania Consolidated Statutes and sentenced to two years probation.

At the time of the applicant's conviction, 18 Pa.C.S. § 4116, in pertinent part, provided that it was unlawful for a person to:

> knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to be used for profit through public performance, such article on which sounds are so transferred, without consent of the owner . . . ."

18 Pa.C.S. § 4116 (1996).

At the time of the applicant's conviction, 18 Pa.C.S. § 903, in pertinent part, provided that a person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

> (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
> (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

18 Pa.C.S. § 903 (1996)

Counsel provides no specific basis or legal authority in support of the assertion that the applicant's convictions are not crimes involving moral turpitude. The applicant was convicted under anti-piracy statutes and his convictions are in the nature of, at a minimum, copyright infringement. The AAO is unaware of any court decision in which criminal copyright infringement has been held to be a crime involving moral turpitude.[1]

The AAO notes, however, that the criminal statutes violated by the applicant require a showing of mens rea as an element thereof and are similar to statutes prohibiting the knowing receipt, possession or sale of stolen or counterfeit goods, offenses generally considered crimes involving moral turpitude. *See De Leon-Reynoso v. Ashcroft*, 293 F.3d 633, 635 (3rd Cir. 2002) (Court held that violation of Pennsylvania criminal statute providing that a person is guilty of theft if the person "intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen" is a crime involving moral turpitude); *Michel v. INS*_ 206 F.3d 253, 263 (2nd Cir. 2000) (Court held that violation of New York statute prohibiting the knowing possession of stolen property by an individual "with intent to benefit himself or a person other than the owner thereof or to impede the recovery by an owner thereof" is crime involving moral turpitude); *Matter of Fernandez*, 14 I. & N. Dec. 24, 25 (BIA 1972)(Court held that violation of federal statute prohibiting the transportation, transmission or transfer "in interstate or foreign commerce of any goods, wares, merchandise, securities or money . . . knowing the same to have been stolen, converted or taken in fraud" is a crime involving moral turpitude).

The AAO also notes that the crime of conspiracy generally is considered a crime involving moral turpitude if the underlying crime is a crime involving moral turpitude. *See Matter of Short*, 20 I. & N. Dec. 136, 138(BIA 1989). Therefore, the AAO concurs with the district director that the applicant's convictions constitute crimes involving moral turpitude that render the applicant inadmissible pursuant to section 212(a)(2)(A) of the Act.

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

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –
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> . . . .
>
> (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 . . . .

[1] The question of whether criminal copyright infringement is a crime involving moral turpitude is mentioned in *Zhai v. USCIS*, 2004 WL 1960195 (N.D.Cal. 2004), and *Lang v. Ashcroft*, 81 Fed.Appx. 268, 2003 WL 22718205 (9th Cir. 2003), but neither court makes a determination on the issue.

A waiver of inadmissibility under section 212(h) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse, child or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse and children are the only qualifying relatives. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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 has established extreme hardship to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

The AAO notes further, however, that 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, 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In her affidavit, the applicant's spouse summarizes her family's expenses and indicates that although she has been employed at various points during her marriage, she and her children are almost wholly dependent on the applicant for financial support. She asserts that she could not survive, either financially or emotionally, without the applicant. She maintains that she received only the equivalent of a high school education in Mali, and that she lacks any special marketable skills. She further asserts that her mother, who is remarried and lives in France, cannot offer her financial assistance. The applicant's spouse also contends that her children would be deprived of numerous opportunities if she relocated to Mali, as Mali is on the poorest countries in the world. She asserts that her husband would be unable to find work in Mali due to the high unemployment rate, and she and her children would suffer from the various effects of poverty if they relocated there.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse and children face extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse and children would suffer emotionally as a result of separation from the applicant if they remained in the United States, but there is insufficient evidence in the record demonstrating that their situation is atypical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. 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). 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.

The applicant's spouse has asserted that the applicant will be unable to financially support the family if he is returned to Mali and that she lacks the education or skills necessary to find employment in the United States sufficient to support herself and her children. Counsel has submitted evidence showing that in Mali, which is among the poorest countries in the world, unemployment is high and a majority of citizens live below the poverty line, particularly in rural areas. *See* Central Intelligence Agency, *The World Factbook: Mali* (2005). However, there is insufficient *specific* evidence in the record demonstrating that the applicant himself lacks the skills, education or connections necessary to find employment in Mali, or that any employment or other means of income available to him there would be insufficient to support his family. The record also shows that the applicant's spouse has been employed in the past in the United States. Although the statements by the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of specific supporting evidence. *Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)). In this case, the documentary evidence submitted by counsel lacks the necessary specificity to support the assertions made by the applicant's spouse.

Likewise, the AAO notes that the while the applicant's spouse and children may experience a lower standard of living if they relocate to Mali with the applicant, there is insufficient evidence showing that this hardship rises to the level of extreme hardship, particularly because the applicant has failed to demonstrate that he and his family would be impoverished if they relocated there.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse and children as required under section 212(h) of the Act. 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(h), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *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.

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