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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: APR 02 2009

IN RE: Applicant: [redacted]

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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Argentina, was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude and under 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 an immigration benefit, specifically, a nonimmigrant visa, by fraud and/or willful misrepresentation. The applicant sought waivers of inadmissibility pursuant to sections 212(h) of the Act, 8 U.S.C. § 1182(h) and 212(i) of the Act, 8 U.S.C. § 1182(i) in order to be able to reside in the United States with her U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge,* dated October 11, 2006.

In support of the appeal, counsel submits, *inter alia*, a brief, dated November 1, 2006; an affidavit from the applicant's U.S. citizen spouse, dated November 2, 2006; and medical documentation relating to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act provides, in pertinent part:

> (A)(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:

> (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)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
> >
> > > (i) . . . the activities for which the alien is inadmissible . . . occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 . . .

(2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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

(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.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(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.

Regarding the applicant's ground of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, the record establishes that in February 1987 and again, in January 1991, the applicant was convicted in the Superior Court of the State of California of Theft, a violation of section 484(a) of the California

Penal Code. The district director correctly found the applicant to be inadmissible to the United States based upon the applicant's commission of multiple crimes involving moral turpitude. On appeal, the applicant does not contest this finding of inadmissibility.

Regarding the applicant's ground of inadmissibility under Section 212(a)(6)(C)(i) of the Act of the Act, 8 U.S.C. § 1182(i), the record establishes that in March 2001, the applicant provided false information on the Form DS-156, Nonimmigrant Visa Application (Form DS-156), when applying for a visitor visa at the U.S. Embassy in Buenos Aires, Argentina. Specifically, she did not disclose that she had been convicted of crimes involving moral turpitude, as discussed above. She consequently obtained a nonimmigrant visa. The district director correctly found the applicant to be inadmissible to the United States based upon fraud and/or willful misrepresentation.[1] On appeal, the applicant does not contest this finding of inadmissibility.

Thus, the first issue to be addressed is whether the applicant's grounds of inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

Section 212(h) of the Act provides that a waiver under section 212(a)(2) is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully permanent resident spouse, parent or child. Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his

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[1] The Department of State's Foreign Affairs Manual [FAM] provides, in pertinent part:

> Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa...
>
> "A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:
>
> (1) The alien is excludable on the true facts; or
> (2) The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

9 FAM 40.63 N. 6.1. In the instant case, had the applicant disclosed that she had been convicted of multiple crimes involving moral turpitude, the consular officer would have likely denied the nonimmigrant visa request. The omissions by the applicant clearly shut off a pertinent line of inquiry that would have impacted the likelihood of successfully obtaining a nonimmigrant visa. As such, based on the evidence in the record, the applicant is clearly inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

or her citizen or lawfully resident spouse or parent. In this case, the only qualifying relative to be considered is the applicant's U.S. citizen spouse.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

> 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.

The applicant's U.S. citizen spouse contends that he will suffer emotional and physical hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility. In a declaration he states that he would suffer extreme emotional hardship due to the long and close relationship they have, as they have been a couple since 1983. *Declaration of* [redacted] dated November 2, 2006. In addition, the applicant's spouse documents that he suffers from numerous medical conditions, including loss of equilibrium and carcinoma that requires permanent and frequent evaluation. *Letter from* [redacted], dated March 14, 2006. Moreover, the applicant's spouse asserts that he can not travel to Argentina on a regular basis to visit the applicant, due to his professional obligations, as head of a trade-tech school for adults, and due to his medical conditions, including spine scoliosis, which makes long flights unbearable. The applicant's spouse notes that due to the applicant's inadmissibility, she is not able to travel to the United States regularly to visit her spouse, as she has done in the past. *Letter from* [redacted], dated March 15, 2006.

Based on the documentation provided by counsel with respect to the applicant's spouse medical conditions, the gravity and unpredictability of the symptoms associated with his conditions, the short and long-term ramifications for those afflicted, and the emotional hardship that the applicant's spouse would encounter due to his inability to travel to Argentina on a regular basis to visit the applicant due to his medical issues, the AAO concludes that the applicant's spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to

her inadmissibility. A separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad, based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse asserts that he will have difficulty finding gainful employment abroad. In addition, he asserts that he would not be able to obtain quality medical care and health services in Argentina. *Id* at 2.

No documentation has been provided to establish that the applicant and/or her spouse, both natives of Argentina, would be unable to obtain gainful employment in Argentina, ensuring financial stability for the family. It has also not been established that without proper medication and treatment, the applicant's spouse would be unable to fly to meet the applicant in Argentina to reside long-term. Moreover, no documentation has been provided to corroborate the applicant's spouse's assertion that he will not be able to obtain adequate medical care and health services in Argentina. 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)). As such, it has not been established that the applicant's spouse would suffer extreme hardship were he to relocate to Argentina, his native country, to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States, it has not been established that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is found to be inadmissible to the United States. Having found the applicant statutorily 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 sections 212(h) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.