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

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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: APR 1 4 2009

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.

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).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The AAO notes that on appeal, the applicant, through counsel, requested 30 days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed January 3, 2007. The record contains no evidence that a brief or additional evidence was filed within 30 days. Therefore, the record is considered complete.

The applicant is a native and citizen of Peru 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 record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 United States citizen spouse, children, and grandchild.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 4, 2006.

On appeal, the applicant, through counsel, contends that the District Director "applied the wrong standard." *Form I-290B, supra.*

The record includes, but is not limited to, the criminal court disposition for the applicant's conviction, a psychosocial assessment on the applicant's family, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on September 18, 1996, the applicant was convicted of fraudulent use of a credit card in the third degree, was sentenced to two (2) years probation, and ordered to pay restitution. On November 22, 2004, the applicant's probation was terminated.

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:

> The Attorney General [Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I)...of subsection (a)(2)...if
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the [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 [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 entered the United States on January 2, 1993 on a B-2 nonimmigrant visa with authorization to remain in the United States until February 20, 1993. On January 25, 1993, the applicant filed a Request for Asylum in the United States (Form I-589). On September 18, 1996, the applicant was convicted of fraudulent use of a credit card in the third degree, was sentenced to two (2) years probation, and ordered to pay restitution. On November 18, 1999, the applicant's Form I-589 was referred to an immigration judge, and on November 24, 1999, a Notice to Appear (NTA) was issued against the applicant. On March 17, 2003, an immigration judge terminated proceedings against the applicant. On October 23, 2003, the applicant's United States citizen spouse filed a Form I-130 on behalf of the applicant. On November 6, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On November 22, 2004, the applicant's probation was terminated. On February 9, 2006, the applicant's Form I-130 was approved. On March 16, 2006, the applicant filed a Form I-601. On December 4, 2006, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives.

The AAO notes that fraudulent use of credit cards has been determined to be a crime involving moral turpitude. *See Balogun v. Ashcroft*, 270 F.3d 274 (5th Cir. 2001) ("'[c]learly forgery and fraudulent use of credit cards...are crimes involving moral turpitude.'"); *see also Matter of Chouinard*, 11 I&N Dec. 839 (BIA 1966). Additionally, the criminal court judge found the applicant guilty of fraudulent use of a credit card, a felony in the third degree, which has a maximum

penalty of imprisonment not exceeding five (5) years; therefore, the applicant is not eligible for the petty offense exception in the Act. *See* section 212(a)(2)(A)(ii)(II) of the Act; *see also* Florida Statutes § 775.082(3)(d). Furthermore, counsel has not disputed that the applicant's conviction is for a crime involving moral turpitude or that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's spouse and children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 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 (Board) 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.

Counsel asserts that "[t]here is an extreme and unusual hardship to the [applicant's spouse]." *Form I-290B, supra.* The AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding what, if any, hardship she would suffer if the applicant were removed from the United States. [redacted] states "removing [the applicant] from the United States will create a major trauma to his family." *Psychosocial Evaluation by* [redacted], undated. The AAO notes that although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment is based on two interviews between the applicant's family and a therapist. There was no evidence submitted establishing an ongoing relationship between the therapist and the applicant's family. Moreover, the conclusions reached in the submitted assessment, being based on two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the therapist's findings speculative and diminishing the assessment's value to a determination of extreme hardship. states the applicant's wife and children do not speak Spanish. *Id.* The AAO notes that the applicant's wife may experience some hardship in relocating to Peru, a country in which she has no previous ties; however, it has not been established that there are no employment options for her in Peru solely because of her lack of fluency in the Spanish language. Additionally, it has not been established that the applicant's wife has no transferable skills that would aid her in obtaining a job in Peru. Furthermore, the AAO notes the applicant's children

are natives of Peru and it has not been established that they have no family ties to Peru. The AAO finds that the applicant failed to establish that his wife and children would suffer extreme hardship if they joined the applicant in Peru.

In addition, counsel does not establish extreme hardship to the applicant's wife and children if they remain in the United States. As lawful permanent residents of the United States and United States citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that it has not been established that the applicant is unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

United States 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 Board 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's family 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(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.