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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: CHICAGO Date: JUL 07 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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).

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, Chicago, Illinois, denied the instant waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Romania, the stepson of a U.S. citizen, the son of a U.S. citizen, and the beneficiary of an approved Form I-130 petition filed by his stepfather. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his stepfather and his mother.

The acting district director found that the applicant had entered the United States using false documentation. The acting district director also found that the applicant failed to establish that denying the waiver application would result in extreme hardship to the applicant's mother and stepfather, and denied the application.

On the Form I-290B appeal counsel argued that the applicant is not inadmissible, and, in the alternative, that the evidence demonstrates that the applicant's mother and stepfather would suffer extreme hardship if the waiver application is not approved. Counsel indicated that he would provide a brief within 30 days. Subsequently, counsel submitted a brief.

In that brief counsel reiterated and expanded upon his positions stated on the Form I-290B, noting that the applicant was 13 years old when he entered the United States using fraudulent documents, and implying that the applicant did not know that his identity was being misrepresented. Counsel asserted that the applicant is not, therefore, inadmissible. Counsel also elaborated upon his argument that the evidence submitted demonstrates that to deny the waiver application would result in extreme hardship to the applicant's mother and his stepfather.

On February 21, 2007, the District Director, Chicago, Illinois, found that the appeal had not been timely filed and rejected it. Counsel subsequently submitted evidence and argument to support the proposition that the appeal was timely. The AAO finds that the appeal was, in fact, timely.

The AAO will first review the determination that the applicant is inadmissible.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

The Form I-130, Petition for an Alien Relative, which his stepfather signed on May 7, 2002, states that the applicant last arrived in the United States by entering without inspection. The Form I-485, Application to Adjust Status, which the applicant signed, also on May 7, 2002, states that the applicant last entered the United States on May 2, 2000, entering without inspection.

In an interview of the applicant conducted by a USCIS officer on June 3, 2004, however, the applicant presented a different story. The applicant stated that he and his brother entered the United States through Miami, Florida on May 2, 2000, accompanied by an unidentified man who gave them papers to present. The applicant stated that his photograph was on the papers, and that he believes a passport was among the papers presented.

The AAO finds that, when he entered the United States, the applicant presented documents that misrepresented his identity, and, thus, his eligibility to be admitted in a lawful status.

On appeal, counsel stated,

> An unknown man [who] accompanied the [applicant and his brother] . . . gave them passports to present to the immigration officer upon arrival. [The applicant and his brother] did as they were told and presented these passports to immigration officers. After they were inspected and admitted to the U.S., the man collected the passports from the boys and they never saw him again.

In briefs submitted with the waiver application, and again on appeal, counsel stated that the applicant was found to be inadmissible because USCIS imputed the misrepresentation of the man who accompanied the applicant to the applicant himself.

The applicant has made clear that he now knows that his identity was misrepresented when he entered the United States. Counsel did not provide any evidence that the applicant was not contemporaneously aware that his identity was being misrepresented, and the applicant has made no such statement. In fact, counsel did not even explicitly assert that the applicant was contemporaneously unaware that his identity was being misrepresented, but merely implied that the applicant was unaware of that fact at the time. Counsel's assertions, and his implications, are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503 (BIA 1980). **Unsupported** assertions and implications of counsel are, therefore, insufficient to sustain the burden of proof.

Further, counsel provided no authority to support the proposition that the applicant's misrepresentation may be excused because of his age, nor did counsel argue that proposition.

The AAO finds that the applicant knowingly presented fraudulent documentation, which misrepresented his identity, to gain entry into the United States, thus committing fraud as contemplated in section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

A waiver of inadmissibility under section 212(i) 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 or parent[1] of the applicant. Hardship to the applicant is not directly 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 mother and stepfather are the qualifying relatives in this case.** 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).

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 nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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 has held:

> 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).

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).

---

[1] Pursuant to section 101(b)(1)(B) of the Act, a stepparent is equivalent to a parent for purposes of a waiver of inadmissibility.

With the waiver application, the applicant provided numerous character references. Those references have no direct relevance to the issue of whether denying the waiver application would cause hardship to the applicant's mother or stepfather.

The record contains a notarized statement, dated August 16, 2004, from the applicant's mother. In it, she stated that if the applicant is removed to Romania she will be devastated, but did not further elaborate.

The record contains a notarized statement, dated August 16, 2004, from the applicant's stepfather. He stated that he does not want the family separated, and that it would be a hardship for him to live with his wife without the children and to be unable to see them, but with no more specificity.

The record contains a notarized statement from the applicant, dated August 17, 2004. In that letter the applicant did not describe any hardship that failure to approve the waiver application would cause to his qualifying relatives.

In a brief filed with the waiver application, counsel stated,

> [The applicant] is eligible for a waiver of the misrepresentation because his stepfather is a U.S. Citizen and his mother is a LPR, and they will suffer extreme hardship if he is refused admission to the U.S.

Counsel referred to the statements from the applicant's mother, and the applicant's stepfather to demonstrate extreme hardship. Counsel also noted that if the applicant is removed to Romania, his mother and stepfather would be forced either to accompany him or to be separated from him.

As to the financial hardship that removal of the applicant would cause, counsel stated,

> [The applicant] is also has [sic] steady employment in the U.S. . . . He works as a contractor, under supervision of established plumbers, such as his stepfather. He also works in construction jobs. His income is contributed to the household. If he were forced to leave the U.S., this would cause extreme financial hardship for [his mother and stepfather]. Not only would they not have [the applicant's] added income in their household, but they would also have to send money to Romania to support him, as his prospects of finding a job are extremely small. Since [the applicant] has not yet completed an apprenticeship, the stricter and more hierarchical apprenticeship and journeyman rules in Europe would preclude him from practicing plumbing or construction work, even under supervision.

The record contains no evidence that the applicant's prospects in Romania are poor, as counsel stated. The record contains no evidence the assertion that the apprenticeship/journeyman rules would preclude the applicant from working in Romania. Again, as per *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984) and *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503 (BIA 1980), counsel's

assertions are no substitute for evidence and cannot sustain the burden of proof in this matter. The evidence is insufficient to show that the applicant could not support himself in Romania.

Further, the record shows that after the applicant's mother left him in Romania, the applicant lived with his grandparents. Since then, his grandfather has died and his grandmother lives with the applicant's uncle. The applicant stated, in his August 17, 2004 affidavit, that if he moves to Romania he will be obliged to live with them until he finds his other accommodations. The applicant offered no reason to believe that such a living arrangement will pose any hardship to his mother or his stepfather. Further, although the applicant stated that he has not seen his father since age three, he offered no other evidence that his father would be unable or unwilling to help him if he returned to Romania.

As for the applicant's alleged steady employment, the applicant indicated, on the G-325 Biographic Information form that he signed on May 7, 2002, that he had not been employed during the previous five years. Subsequently, however, in attempting to overcome inadmissibility, the applicant provided letters from alleged employers. One of those letters, dated August 15, 2004, states that the applicant had then worked for that company for four years. That letter clearly conflicts with the applicant's assertion, on the Form G-325, that he had not been employed at any time during the five years prior to May 7, 2002.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The record contains the applicant's 2005 Form 1040X, Amended U.S. Individual Income Tax Return. That return shows that the applicant originally calculated that he had adjusted gross income of $12,642 during 2005, but had recalculated that he had $21,208 in adjusted gross income. Page one of the original return, which would have shown the provenance of the asserted income, whether wages, interest, capital gain, *etc.*, was not provided. No Form W-2, Wage and Tax Statements, or Form 1099, Miscellaneous Income statements were provided. Those documents would have shown, respectively, whether the applicant was paid any wages or paid any amounts for work performed as a contractor. The record contains no indication, therefore, what portion of that asserted income, if any, was from wages or from other compensation for services. Further, the record contains no indication that it was filed with IRS.

In the brief submitted on appeal, counsel stated that the applicant has substantial income, referring to the 2005 tax return as evidence of that assertion. Counsel further stated that the applicant contributes financially to the household of his mother and stepfather, thus providing for his mother's medical care. Counsel provided no evidence in support of those latter assertions.

The evidence in the record is insufficient to demonstrate that the applicant was employed in the United States during 2005 or any other year. The evidence of record is insufficient to show that the

applicant has provided any money to his mother and stepfather. As such, the evidence is insufficient to demonstrate that, if his mother and stepfather were deprived of the applicant's income, it would cause them hardship.

The record contains a letter, dated June 8, 2006, from Ioan [redacted], pertinent to the applicant's mother's health. [redacted] stated that the applicant's mother was seen in his office on that day for "history of stroke," persistent hypertension, and cerebral atherosclerosis with mental impairment. [redacted] stated that the applicant's mother's condition was not expected to improve and that she requires constant care, medications, and family support. The doctor did not describe the type of care and support needed and did not state the current seriousness of her conditions. The doctor did not indicate that the applicant's mother's condition is likely to deteriorate. The doctor did not indicate whether he had previously examined the applicant's mother or whether he had met her on that day. He did not indicate the basis of his assertions pertinent to the mother's conditions; that is, whether he discovered them through examination, whether he relied on the notes of other doctors, or whether the applicant's mother or others reported them to him. That letter does little to support the argument that for the applicant to return to Romania would cause extreme hardship to his mother.

The remaining consideration is the emotional hardship that would be caused to the applicant's mother and stepfather, as a result of his removal to Romania, if they remained in the United States. Although counsel made no argument pertinent to emotional hardship, the applicant's mother stated, in her August 16, 2004 statement, that she would be devastated by the applicant's removal. The applicant's stepfather, in his August 16, 2004 statement, declared, without elaboration, that it would be a hardship for him to live with his wife without the applicant present.

As to the emotional hardship alleged, the AAO notes that, in nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), **the hardship must be greater than the normal, expected hardship involved in such** cases. The applicant's mother and stepfather have not noted any factors that show that the removal of the applicant would cause an emotional hardship greater than that which would be expected in the ordinary case.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not

constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. ***See* INS v. Jong Ha Wang, *450 U.S. 139 (1981)*** (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

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 mother and stepfather face extreme hardship if the applicant is refused admission. Rather, the record suggests that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a child is removed from the United States.

The record demonstrates that the applicant has loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

The evidence is insufficient to show that the applicant's mother and stepfather would suffer extreme hardship if he is removed from the United States and they remain. The record contains no evidence at all to demonstrate that they would suffer extreme hardship if he is removed and they accompany him.

The AAO therefore finds that the applicant failed to establish extreme hardship to qualifying family members as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

The record suggests another possible basis of inadmissibility that was not cited as a basis for denying the waiver application.

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

> (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.
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

> (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
>
> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record shows that the applicant has a history of arrests and convictions.

(1) The applicant was arrested, on January 20, 2002, under the name [redacted] in Chicago, Illinois, for a violation of 625 Illinois Compiled Statutes (ILCS) 5.0/4-102-A-1, damaging a vehicle or removing part of a vehicle without authority to do so. The disposition of that charge is unknown to the AAO. [redacted]

(2) The applicant was arrested, on July 24, 2002, under the name [redacted], in Chicago, Illinois, for a violation of 720 ILCS 5.0/16A-3-A, retail theft. The disposition of that offense is unknown to the AAO. [redacted]

(3) The applicant was arrested, on September 1, 2003, in Lincolnwood, Illinois, for a violation of 720 ILCS 5.0/17-3-A-1, forgery. The applicant was subsequently also charged with a violation of 720 ILCS 5.0/16-1-A-1-A, theft, and a violation of 720 ILCS 5.0/21-4-A, criminal damage to government property. On November 25, 2003 the charges of forgery and criminal damage were reduced to misdemeanors. The applicant was then convicted, pursuant to his pleas, of all three charges. ([redacted]

(4) The applicant was arrested, on July 10, 2004, in Morton Grove, Illinois, for a violation of 625 ILCS 5.0/11-403, failure to give aid or inform after a traffic collision; a violation of 625 ILCS 5.0/11-503-A, reckless driving; a violation of 625 ILCS 5.0/11-402-A, leaving the scene of an accident with vehicular damage; a violation of 625 ILCS 5.0/3-707, operating an uninsured vehicle; and a violation of 625 ILCS 5.0/11-709-A, illegal lane usage. The dispositions of those charges are unknown to the AAO. [redacted]

(5) The applicant was arrested, on December 31, 2004, for a violation of 15 ILCS 335.0 14-a-2, unlawful use of an identification card (representing a card issued to another to be one's own identification). On February 25, 2005 that charge was disposed of by withholding judgment. The

applicant was placed on three months of supervision and required to pay a fine or court costs of $150. [redacted]

In number three, above, the applicant was convicted of forgery and theft. Forgery and theft are typically crimes involving moral turpitude, depending upon the law pursuant to which they were charged and the nature of the acts committed. *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008). Further, because the applicant was convicted of at least two such crimes, the exceptions to inadmissibility at section 212(a)(2)(A)(ii) of the Act are apparently unavailable to him.

Because the decision denying waiver was not based, even in part, on inadmissibility for convictions of crimes involving moral turpitude, and the applicant has not been accorded an opportunity to address this issue, the AAO will not rely upon that basis in this decision. The AAO notes, however, that the applicant may be inadmissible on that additional basis.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.