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U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: JUL 07 2009

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.

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 Acting District Director, Miami, Florida, Office denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [redacted], is a native and citizen of Romania 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 been convicted of committing a crime involving moral turpitude.

The applicant is a derivative of an approved Immigrant Petition For Alien Worker (I-140) filed on his behalf by his lawful permanent resident spouse. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated February 17, 2006. The applicant submitted a timely appeal.

On appeal, counsel states that the Department of Homeland Security erred in finding that the applicant demonstrated a lack of respect for the laws of the United States. Counsel asserts that the events that led to the applicant's arrests occurred at the same time and he did not commit the same offense again. In addition, counsel states that the adjudicating officer failed to consider the applicant's wife's emotional and physical illness in considering the waiver application.

The AAO will first address the finding of inadmissibility.

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

> (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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

> A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –
>
> > (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The record reflects that in the Circuit Court, 13th Judicial Circuit in and for Hillsborough County, Florida, [redacted], on March 21, 2000, the applicant entered a plea of guilty and was found guilty of organized fraud, cash/deposit item w/intent to defraud (2 counts), grand theft third degree, utter forged instrument (4 counts), forgery (4 counts), utter forged instrument (2 counts), forgery (2 counts). With [redacted] the applicant entered a plea of guilty and was found guilty of organized fraud, forgery (4 counts), utter forged instrument (4 counts), cash/deposit item w/intent to defraud (4 counts). The judge ordered that the applicant be adjudged guilty of the crimes and ordered that adjudication of guilty be withheld. The applicant was sentenced to 48-months probation and was ordered to pay charges, costs, and fees.

In that same court on February 26, 2001, with [redacted], the applicant entered a plea of guilty and was found guilty of depositing item with intent to defraud (2 counts) and grand theft third degree. The judge ordered that the applicant be adjudged guilty of the crimes, and placed him on three-year probation and ordered him to pay charges, costs and fees.

The AAO notes that the applicant's crimes were committed between November 1999 and December 8, 1999, inclusively.

Forgery is a crime involving moral turpitude. *Matter of Seda,* 17 I&N Dec. 550 (BIA 1980). Uttering a forged instrument is a crime involving moral turpitude. *Matter of S-C-*, 3 I&N Dec. 350 (BIA 1949). Having found the applicant's conviction for forgery and uttering a forged instrument are crimes involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), the AAO need not address whether his other offenses are crimes involving moral turpitude.

The AAO will now consider whether the applicant's section 212(h) waiver should be granted.

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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen

or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's lawful permanent resident spouse. If extreme hardship to the 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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant 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 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In support of the waiver application, the record contains psychological reports, medical records, income tax records, financial records, birth certificates, a marriage certificate, photographs, real estate records, employment letters, a country report on Romania, and other documents.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's qualifying relative must be established if she or he remains in the United States without him, and alternatively, if she or he joins the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel states that [redacted] annual income is $24,000, which is not sufficient to support herself. Income tax records show [redacted] income for 2008 as $24,023 and [redacted] business income after expenses as $17,766. For 2007, her income was $18,370 and [redacted] was $45,924 after expenses. For 2006, [redacted] income was $23,080; [redacted] was $10,003 after expenses. Automobile insurance, car payments (a letter indicates the loan has been closed), an American Express bill, telephone bills, and a purchase agreement for a condominium are contained in the record. Invoices from Vista South Florida reflect monthly payments of $323.26 for [redacted] and the same amount for her spouse. The AAO finds that the submitted invoices are insufficient to

establish that annual income of $24,000 is not sufficient to meet her monthly financial obligations.

Counsel indicates that the applicant's wife's emotional and physical health must be considered if she were to remain in the United States without her husband. The letter dated April 10, 2009, by [redacted], Segal Institute for Clinical Research, conveys that the applicant's spouse, [redacted] has been a patient for three years, and that she suffers from Major Depressive Disorder and has been treated with different antidepressants. He conveys that "she is doing well with the help of medications and her husband [redacted]," and that at this time, attends weekly therapy sessions with his spouse. The letter indicates that [redacted] financially supports his wife and that without him she would not be able to afford treatment. He states that [redacted] priority is to take care of his wife and that he is key to her well-being and should never be separated from her.

The May 23, 2003 evaluation of [redacted] by [redacted], conveys that outside of her husband [redacted] has practically no social life and that [redacted] had "periods of depressed thinking" during her husband's incarceration. [redacted] states that [redacted] is employed as a cook and waitress. He states that she has "significant, ongoing and severe emotional distress, depression and anxiety," and her husband's deportation is a significant concern of hers, and if it happens, would affect her mental and physical health.

[redacted], in an April 18, 2009 letter, described [redacted] as having chronic medical conditions including leukocytosis for which she follows up with her hematologist. He states that [redacted] would have hardship if her spouse is not allowed to support her. A medical record dated July 15, 2003, shows [redacted] as borderline leukocytosis that requires no treatment and follow-up in four to six months.

Courts have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

Based upon letter that conveys that for three years has undergone treatment for Major Depressive Disorder, that has attended weekly therapy sessions with his spouse, and that [redacted] is doing well with her medication and with her husband's help, the AAO finds that [redacted] would experience extreme emotional hardship if she remained in the United States without her husband.

In joining her husband to live in Romania, although the economic and political conditions in Romania are a relevant hardship consideration, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation

extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). Contained in the record is a country report on Romania that relates to 2004. The highlighted parts of the report indicate that there is violence and discrimination against women that the law does not address, the government does not enforce the equal rights of women, and the minimum monthly wage did not provide a decent standard of living for a worker and family and workplace health and safety conditions have not improved. This report provides general information about conditions in Romania. No evidence has been presented to establish that Ms. [redacted] would be specifically targeted for violence or discrimination by any group or person. In *Kuciemba v. INS,* 92 F.3d 496, 500 (7th Cir. 1996), the court states that general economic conditions in an alien's native country do not establish extreme hardship without evidence that the conditions are unique to the alien. Furthermore, the record does not demonstrate any economic detriment to [redacted] if she were to join her husband in Romania.

The applicant has established extreme hardship to his spouse if she were to remain in the United States without him. In regard to the hardship factors presented if the applicant's spouse were to join him in Romania, having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to the applicant's spouse if she were to join her husband in Romania.

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) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed. The application will be denied.

ORDER: The appeal is dismissed. The application is denied.