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U.S. Citizenship and Immigration 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: BALTIMORE, MD Date: SEP 04 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. section 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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Bolivia. She was found to be inadmissible to the United States pursuant to 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 a Crime Involving Moral Turpitude (CIMT). The applicant is the daughter and wife of lawful permanent residents (LPRs). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to remain in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 29, 2007.

On appeal, counsel states the District Director failed to follow established precedent, applied the higher legal standard of "exceptional and extremely unusual hardship" used in cancellation of removal proceedings, and that the applicant has established extreme hardship to her mother and spouse.

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 (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, that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
>
> (1) (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 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 record reflects that the applicant pled guilty on May 31, 2002 to Misuse of a Social Security Account, a felony, under 42 U.S.C. § 408(a)(7)(B), in the United States District Court for the Eastern District of Virginia. On appeal, counsel for the applicant stipulates that Board of Immigration Appeals (BIA) precedent considers convictions under 42 U.S.C. § 408(a)(7)(B) to be CIMTs.

A waiver of inadmissibility under section 212(h) 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, parent or child of the applicant. Hardship to the applicant is not directly relevant to the determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's LPR spouse and mother 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. Section 212(h) of the Act; s*ee also Matter of Mendez,* 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 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 566.

> 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 extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or 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.

The record of proceeding contains the following relevant evidence: counsel's brief; Internet printouts on Asherman's Syndrome; copies of child care training completion certifications for the applicant; photographs of the applicant at her place of employment, and with her spouse and family; a statement from the applicant's priest; copies of court records related to the applicant's conviction; medical records for the applicant detailing her treatment for Asherman's Syndrome, as well as other fertility treatment procedures; statements from the applicant's spouse and mother; statements from friends and family of the applicant; and marriage and birth certificates for the applicant and her spouse;

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The statute in question is 42 U.S.C. § 408(a)(7)(B), which states in relevant part:

> Whoever . . . with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to [her] . . . shall be guilty of a felony."

A conviction under this statute requires intent to deceive by falsely representing a social security number to be one's own. As such, the statute is a crime that involves reprehensible conduct and a degree of scienter, and is not divisible.

Conviction of Misuse of a Social Security Account under 42 U.S.C. § 408 is a CIMT. *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992); Crimes involving fraud as an element have long been held to be a CIMT. *Matter of P----------*, 6 I&N 795 (BIA 1955)(holding that a crime containing as an inherent element the intent to deceive or mislead is a crime involving moral turpitude.) *See also Matter of Cristoval Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)(establishing that a crime involving moral turpitude is a crime that involves reprehensible conduct and some degree of scienter).

On appeal counsel asserts that the applicant and her spouse are having fertility problems, have been trying to have children for a number of years incurring various expenses and enduring numerous medical procedures, and that there is no evidence the applicant could receive the fertility treatment she needs if she were to return to Bolivia. Counsel further states the applicant has no family in Bolivia, as all of her relatives reside in the United States. As noted above, hardship to the applicant is not relevant to a determination of extreme hardship in a § 212(h) proceeding except as it relates to a qualifying relative. The AAO notes that it is the applicant's burden to establish extreme hardship in these proceedings. While the record does contain sufficient documentation to establish that the applicant has Asherman's Syndrome, the medical documentation submitted does not conclude that she would be unable to receive fertility treatment in Bolivia, or that her condition requires treatment in the United States.

The applicant's mother states that she is suffering from severe arthritis and colon problems; that she relies significantly on the applicant and her spouse to pay for most of her medical bills, medications and living expenses, help her around the house and provide groceries; and that she would suffer exceptional hardship if the applicant and her spouse were to move to Bolivia. Counsel also asserts that the applicant's mother would suffer hardship if she were to return to Bolivia, and that her other two daughters, who also reside in the United States, are unable to assist her with her needs. An examination of the record reveals that there is insufficient documentation to corroborate the applicant's mother's or counsel's assertions. There is no medical documentation verifying the applicant's mother's medical conditions, no copies of bills, receipts or other documentation indicating the applicant and her spouse support her financially, and no evidence that the applicant's sisters would be unable to provide assistance to their mother in the event of the applicant's removal. The AAO also notes that counsel asserts it would constitute extreme hardship for the applicant's

mother if she were to relocate to Bolivia with the applicant. However, counsel fails to articulate the basis on which the applicant's mother would suffer such hardship, beyond stating that she has few ties to Bolivia, and the record offers no documentary evidence in support of counsel's claim. While the AAO acknowledges that the applicant's mother wishes the applicant to remain in the United States, there is insufficient evidence to establish that she would suffer an extreme hardship if the applicant were excluded from the United States.

The applicant's spouse states that he has worked very hard to become a productive member of society, that he and the applicant recently purchased a home and that without his wife he will not be able to reach his goals. Both counsel and the applicant's spouse assert that the economy in Bolivia is very bad and that he would be unable to find work as a chef. An examination of the record does not support these assertions. Although counsel references statements from the applicant's friends and family regarding Bolivia's weak economy, there is no documentation that objectively establishes that the applicant's spouse would be unable to find employment in Bolivia. The record does not contain any documentation, such as published country conditions reports, that specifically indicates that the applicant's spouse would be unable to find employment. 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)). While the AAO acknowledges the applicant's spouse's statements about the importance of his wife in his life, the record does not contain any evidence that he would experience extreme hardship if he were to remain in the United States.

As noted above a determination of extreme hardship involves an evaluation of hardships that would be imposed on qualifying relatives whether they remain in the United States or relocate with the applicant. In this case, the evidence that has been submitted is insufficient to establish that either of the applicant's qualifying relatives would suffer extreme hardship in the event they remained in the United States or relocated with the applicant to Bolivia.

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 husband or mother would face extreme hardship if she is refused admission. 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. In the present case, the record fails to distinguish the hardships that would be experienced by the applicant's spouse or mother from those suffered by other individuals whose spouses or children have been found to be inadmissible to the United States. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative 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 she merits a waiver as a matter of discretion.

Counsel has made a number of other assertions pertaining to the applicant's work history and moral character. These assertions are relevant to an exercise of discretion, but are not factors considered in the determination of extreme hardship. As the applicant has not established extreme hardship to a qualifying relative, the AAO will not address counsel's claims regarding the exercise of discretion in the present case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.