

Identify data deleted to
prevent disclosure of information
warranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

~~PUBLIC COPY~~

APR 11 2005

FILE:

Office: HARTFORD DISTRICT OFFICE

Date:

IN RE:

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Hartford. An appeal to the Administrative Appeals Office (AAO) was dismissed on October 15, 2002. The matter is now before the AAO on a Motion to Reopen. The motion will be granted, the previous decisions of the district director and AAO will be withdrawn and the appeal sustained.

The record reflects that the applicant is a native and citizen of Colombia. 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 record reflects that the applicant is the spouse of a U.S. citizen and father of a U.S. citizen daughter. He seeks a waiver of inadmissibility in order to remain in the United States with his wife and child.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The district director also appeared to find the applicant ineligible for a favorable exercise of discretion, based on the seriousness of the fraud which rendered the applicant inadmissible, the applicant's 1994 arrest for driving without a license, and a 1995 conviction for misdemeanor forgery.¹ The application was denied accordingly. On appeal, on December 27, 2001, counsel requested 60 additional days to submit supporting evidence. The evidence was not received by the AAO. The appeal was dismissed on October 15, 2002.

On motion, counsel contends that he sent in the evidence to the district director, who failed to forward it to the AAO. As support, counsel submits copies of mailing receipts. Applicant's Exh. C. The AAO notes that the subject items of the receipts were mailed on March 4, 2002, one week after the 60-day extension of time to submit new evidence would have expired, on February 25, 2002. Counsel also submits with the motion evidence of the health condition of the applicant's wife.

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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's fraudulent use of a passport to gain admission to the United States. *Decision of the District Director*, at 2. The district director's determination of inadmissibility is not contested by the applicant.

Section 212(i) provides, in pertinent part:

(i) (1) 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

¹ Although the district director explicitly weighed these factors against the applicant, discretion was not specifically mentioned. See *Decision of the District Director* (November 8, 2001), at 3. From the context of the discussion and the applicable law, the AAO concludes that the district director considered these as negative discretionary factors after finding the applicant statutorily ineligible for relief.

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 . . .”

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien himself is not a permissible consideration under the statute.

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 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).

The record reflects, with respect to the health of the applicant’s wife [REDACTED] that she underwent surgery in connection with a serious laceration to her arm and hand. *Yale New Haven Hospital Discharge Summary* (December 30, 1986), at 2. A follow-up surgery was conducted approximately one year later. *Yale New Haven Hospital Discharge Summary* (December 11, 1987). Her injury was characterized as an “almost complete amputation of the right arm.” *Id.*, at 2. The follow-up surgery was an attempt to improve her mobility, as she was unable to appose her thumb and had partial nerve paralysis. *Id.* In early 1997, she was involved in a car crash, which led to “significant low back pain and radiation into both anterior thighs . . . [and] small to moderate right-sided disc herniation” *Neurosurgical Consultation by* [REDACTED] (November 18, 1997). Her injuries developed further and worsened over time. *See Neurosurgical Consultation by* [REDACTED] (March 2, 20, 1998). She remained disabled and required surgery. *Letter of* [REDACTED]. After surgery, her health improved and she returned to work; however, her pain again worsened, and her doctor recommended a reduction in work hours. *See Neurosurgical Consultation by* [REDACTED] (July 6–November 9, 1998). Additionally, in 2001, [REDACTED] was diagnosed with regularly occurring migraines, in part caused by frequent use of pain medication, depression, stress, insomnia, and fertility drugs. *Letter of Michael Mankus, MD* (December 24, 2001).

The record also indicates that [REDACTED] son from a prior relationship, now aged 12, suffers from several emotional and mental conditions including Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder with bipolar traits, Generalized Anxiety Disorder, and Phonological Disorder. *Clifford Beers Guidance Clinic Diagnostic Impression*. He has been hospitalized twice due to "threatening and out of control behavior." *Id.* He requires several medications, and has exhibited disruptive behavior, including being "aggressive towards his mother." *Id.* The attending physician and social worker recommend that he attend a school with a "therapeutic milieu to help Adam with his peer problems which would likely persist. Until he attends such a school, he is in need of an extended day program to help him cope with the many stressors he is experiencing." *Id.*, at 2. His school difficulties are characterized as "long-term and pervasive." *Hospital of Saint Raphael Child & Adolescent Day Hospitals Discharge Summary* (June 26, 2001). He has been ejected from treatment programs due to unsafe behavior and aggression. *Id.* He participates in public special education programs, based on his classification as a student with "serious emotional disturbance." See New Haven Public Schools, *Planning and Placement Team (PPT) Meeting Summary* (September 7, 2001). He requires aide-attended "van-door-to-door" transportation service to school, apparently to minimize the risk to himself and others of his behavioral problems. *Id.*, at 3; see also New Haven Public Schools, *Individualized Education Program Behavior Plan* (September 7, 2001).

Financially, due to her disabilities, [REDACTED] relies on Social Security benefits, including Supplemental Security Income (SSI). As of November 25, 2001, her monthly benefits totaled \$565. *Notice of Change in Payment to Etta Goldberg* (November 25, 2001). Her son receives an additional \$525 monthly SSI. *Notice of Change in Payment to Adam Catalbasoglu* (November 25, 2001). In addition to her son, mentioned above, [REDACTED] has two daughters, a 19-year-old from a prior relationship, and a three-year-old with the applicant.

Country conditions in Colombia are characterized by prolonged civil strife, guerrilla and terrorist violence, frequent kidnappings for ransom ("more often . . . than in any country in the world, and affects all parts of the country"), prevalent crime, and poor conditions. See *U.S. Department of State Consular Information Sheet* (April 18, 2001). The Department of State warns "American citizens [to] avoid all travel to Colombia." *U.S. Department of State Public Announcement* (February 22, 2002).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that [REDACTED] faces extreme hardship the applicant is refused admission. If she were to relocate to Colombia, she faces extremely dangerous country conditions and reduced access to the special education her son needs, potentially resulting in increased dangerous and disruptive behavior and aggression towards her. If she remains in the United States, she will have the burdens of raising two children alone, one of whom is very young and the other has serious emotional problems and a tendency towards aggression in the home.² The physical, financial, and emotional hardship of these circumstances is significantly amplified by her disabilities and inability to work. The record therefore reflects that [REDACTED] could conceivably suffer injury if she either relocated to Colombia or remained in the United States without her husband. See *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). The hardship she faces is above and beyond the common,

² It is not clear from the record whether [REDACTED] 19-year-old daughter resides in the family home.

expected hardships associated with removal of a spouse. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). The AAO therefore finds that the applicant has established extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

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). The negative discretionary factors in this case include the applicant's fraudulent use of a passport to obtain admission to the United States, and his criminal history. The AAO notes that the record does not contain evidence that the applicant was arrested in 1994 for driving without a license, as contended by the district director. There is no record of his having been arrested in 1994 on the Federal Bureau of Investigation (FBI) *Record of Arrest and Prosecution* ("RAP sheet") (November 24, 2000). Further, it appears that the applicant admitted this infraction in response to the question in Part 3 of the Form I-485, *Application to Register Permanent Resident or Adjust Status*, which states, "Have you ever, in or outside the United States, knowingly committed any crime of moral turpitude . . . for which you have not been arrested?" (filed October 26, 2000) (emphasis added). There are no police or other records in the file documenting the incident. For these reasons, there is insufficient evidence that the applicant was arrested for driving without a license and the AAO cannot conclude that there was more than a mere traffic violation involved.

The record does reflect that, in 1995, the applicant was convicted for misdemeanor forgery. Absent from the record are police reports detailing the circumstances surrounding the offense for which the applicant was convicted. The statute under which the applicant was apparently convicted provides, in relevant part:

§ 32.21. Forgery

(a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

- (i) to be the act of another who did not authorize that act;
- (ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or
- (iii) to be a copy of an original when no such original existed;

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A); or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B).

(2) "Writing" includes:

(A) printing or any other method of recording information;

(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

(C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with *intent to defraud or harm another*.

(c) Except as provided in Subsections (d) and (e) an offense under this section is a Class A misdemeanor.

Tex. Penal Code Ann § 32.21 (2004) (emphasis added).³ The AAO notes that, although the applicant meets the "petty crime" exception to inadmissibility based on this conviction alone, forgery, which under this Texas statute includes the intent to defraud or harm, constitutes a crime involving moral turpitude under INA § 212(a)(2)(A)(i)(I). See INA § 212(a)(2)(A)(ii)(II), 8 U.S.C. § 1182(a)(2)(A)(ii)(II) ("petty crime" exception to inadmissibility). The BIA has held that "moral turpitude refers generally to conduct that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." See *In Re Torres-Varela*, 23 I&N Dec. 28 (BIA 2001) (citations omitted). Forgery has been specifically found to be a crime involving moral turpitude, in view of the nature of the crime. *Matter of Seda*, 17 I&N Dec. 550 (BIA 1980) (citations omitted).

The positive discretionary and mitigating factors in this case include the finding of extreme hardship with respect to the applicant's wife, the relatively minor nature of the crime for which he was convicted, and the apparent rehabilitation of the applicant in that approximately 10 years have passed since the applicant's last criminal offense or administrative violation. The AAO finds that the positive discretionary factors in this case outweigh the negative and the applicant qualifies for a favorable exercise of discretion. Accordingly, the previous decisions of the district director and the AAO will be withdrawn and the appeal sustained

ORDER: The motion is granted and the appeal is sustained.

³ The statute has not changed significantly in substance since the time of the applicant's conviction.