

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

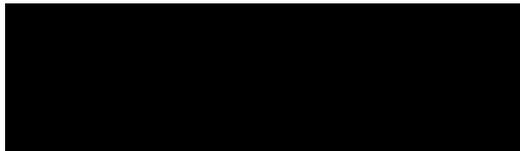


FILE: [REDACTED] Office: LOS ANGELES, CA Date: APR 23 2007

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant is a native and citizen of Iran who was found to be inadmissible to the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The district director determined that the applicant had failed to establish a qualifying family member would suffer extreme hardship if his Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601 Application) were denied. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that his U.S. citizen wife and U.S. lawful permanent resident mother will suffer extreme hardship if he is denied admission into the United States as a lawful permanent resident, and the applicant requests that his Form I-601 application be approved. The applicant does not dispute the district director's finding that he is inadmissible under the Act.

Although not stated in the district director's decision, the record indicates that the applicant was found to be inadmissible to the United States under 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.

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

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any 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.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. . . .

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

The evidence in the record reflects that on November 2, 1995, the applicant was convicted in the Superior Court of the State of California for the County of Orange, of the following offenses:

Between November 1992 and March 1994, eight counts of violating section 4463 of the California Vehicle Code, a felony, for willfully and unlawfully, and with intent to defraud,

altering, forging, counterfeiting, and falsifying a certificate of title and bill of sale to and for a motor vehicle (Forgery of Registration Forms.) Section 4463(a) of the California Vehicle Code provides that the violation of section 4463 of the California Vehicle Code is punishable by 16 months, 2 years or 3 years in state prison, or by imprisonment in county jail for not more than 1 year;

On or about October 1, 1992, and on or about April 30, 1994, violation of Section 182(1) of the California Penal Code, a felony, for willfully and unlawfully conspiring to commit the crimes of falsification of documents. Section 182(a) of the California Penal Code provides that violation of section 182(1) of the California Penal Code is punishable in the same manner and to the same extent as the punishment of the felony;

Between December 1992 and April 1994, seven counts of violating section 118 of the California Penal Code, a felony, for being a person who testified, declared, deposed, and certified under penalty of perjury in a case in which such testimony, declaration, deposition, and certification is permitted by law under penalty of perjury, to wit, Certificate of Title and Application for Transfer, did willfully state as true a material matter which he knew to be false (Perjury by Declaration). Section 126 of the California Penal Code, provides that Perjury is punishable by imprisonment for two, three or four years;

Between December 1992 and April 1994, nine counts of violating section 487(1) of the California Penal Code, a felony, for willfully and unlawfully taking personal property of a value exceeding \$400 (Grand Theft – Personal Property). Section 489 of the California Penal Code provides that Grand Theft is punishable by imprisonment not to exceed one year;

Violation of sections 12022.6(a) and 12022.6(b) of the California Penal Code, for commission and attempted commission of the above offenses with the intent to do so, and taking, damaging and destroying property, the value of loss exceeding \$50,000 and \$150,000, respectively. Sections 12022.6(a)(1) and 12022.6(a)(2) of the California Penal Code provide that an additional term of one year (each) shall be imposed for the violation of sections 12022.6(a) and 12022.6(b) respectively.

A review of the above offenses reflects that the applicant was convicted of crimes of moral turpitude. The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(h) of the Act provides in pertinent part that:

The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2)

- (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 [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

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. The qualifying family

members in the present matter are the applicant's U.S. lawful permanent resident wife¹, the applicant's U.S. lawful permanent resident mother, and the applicant's U.S. citizen child, born December 20, 2006.²

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 to be relevant in determining whether an alien had established extreme hardship for waiver of inadmissibility purposes. The factors included 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

U.S. court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The U.S. Ninth Circuit Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship.

Counsel states in a February 23, 2007, letter that the applicant and his wife recently had a baby, born December 20, 2006, who is also a qualifying relative for section 212(h) of the Act purposes. Counsel makes no other statements regarding the applicant's child, and the applicant asserts no hardship to the child if his waiver of admissibility application is denied. The applicant asserts however, through counsel, that his wife and mother would suffer extreme hardship if he were required to return to Iran. Specifically, the applicant asserts that his wife (Mrs. ██████████), would suffer extreme hardship if she moved with the applicant to Iran because she: 1) does not know the language or culture; 2) would have to leave her work and profession; 3) would have to leave her immediate and extended family in the United States; and 4) would have to leave the only country she knows and considers to be her home. To support these assertions, the applicant submits two affidavits from his wife.

In her first, undated, affidavit Mrs. ██████████ states that she and the applicant are recently married and that he brightens up her life and helps her when she most needs help. Mrs. ██████████ states that the applicant's parents live with them, and that they are dependent on the applicant as their driver, translator, and companion. Mrs. ██████████ states further that the applicant's mother has been very sad since an accident in which the applicant's sister and his sister's husband died, and Mrs. ██████████ states that the applicant's mother is only her old self when the applicant is around. Mrs. ██████████ states that the applicant's parents would be unable to go to Iran with the applicant because of their medical needs. She states further that the applicant is a father figure to his deceased sister's two U.S. citizen daughters. In a second, undated, affidavit Mrs. ██████████ adds that she, herself, has

¹ Although the applicant claims that his wife is a U.S. citizen, the record contains no evidence of her U.S. citizenship. The evidence in the record does, however, establish that the applicant's wife has been a U.S. lawful permanent resident since July 7, 1998. She is thus a qualifying family member for section 212(h) of the Act purposes.

² The applicant listed his U.S. citizen father as an additional qualifying family member for section 212(h) of the Act purposes. The record reflects, however, that the applicant's father passed away pending the present AAO appeal.

become depressed lately and that she has difficulty sleeping due to the uncertainty of the applicant's immigration status and the possibility of having to comply with gender equality, dress code and cultural differences in Iran. Mrs. [REDACTED] states that she has not gone to work for a few days, and that the applicant is presently the sole provider in the household. She additionally expresses concern that the applicant's mother is no longer mentally well and that his mother requires medication.

An affidavit written by the applicant's deceased father states, with regard to the applicant's mother, that she has heart difficulties, that she and he meet with doctors two to three times a week and that they rely on the applicant to drive them to their doctor appointments. The applicant's father's letter additionally states that he and the applicant's mother live with the applicant, that they depend on the applicant completely, and that they would not have Medicare insurance in Iran to treat their health conditions. The record does not contain a separate affidavit or statement of hardship from the applicant's mother.

The record also contains an affidavit from one of the applicant's nieces describing the emotional hardship she would suffer if the applicant had to return to Iran. The AAO notes, however, that the hardship to the applicant's niece may not be considered in the present matter, as she is not a qualifying family member under section 212(h) of the Act. The record reflects further that the applicant's father died recently. Accordingly, the claim of extreme hardship to the applicant's father will also not be considered.

The record contains a December 2004 U.S. Department of State, Consular Information Sheet, to corroborate the applicant's assertion that his mother and wife would suffer extreme hardship in Iran. The report reflects that, "[b]asic medical care and medicines are available in the principal cities [in Iran], but may not be available in outlying areas. Medical facilities do not meet U.S. standards and frequently lack medicines and supplies." The Consular Information Sheet also indicates that, "U.S. citizens in Iran who violate Iranian laws, including laws that are unfamiliar to westerners (such as those regarding the proper wearing of apparel), may face severe penalties." In addition, the Consular Information Sheet indicates that:

Non-Iranian-national women who marry Iranian citizens obtain Iranian nationality upon marriage and must convert to Islam. They likewise must have the consent of their husbands to leave Iran. In case of marital problems, women in Iran are often subject to strict family controls. Because of Islamic law, compounded by the lack of diplomatic relations between the United States and Iran, the U.S. Interests Section in Tehran can provide very limited assistance if an American woman encounters difficulty in leaving Iran.

It is noted that the record contains no corroborative evidence to establish the level of medical care that the applicant's mother requires, the frequency of such care, or that she requires assistance from the applicant. The record also lacks corroborative evidence to demonstrate that the applicant's mother has received medical treatment in the past, and the record lacks corroborative evidence to establish that the applicant's mother has received prescriptions for any medical or mental ailments. Accordingly, the AAO finds that the applicant has failed to establish that his mother would suffer extreme medical hardship if she returned to Iran with the applicant. The applicant also failed to establish that his mother would suffer extreme hardship if she remained in the U.S. without the applicant. As previously discussed, the record contains no evidence to establish that the applicant's mother suffers from a medical or mental condition, or that she is dependent on the applicant to assist her, and no other hardship claim was made regarding the applicant's mother.

The AAO does find, however, that the information contained in the Consular Information Sheet establishes that if the applicant's wife moved with the applicant to Iran, she would suffer hardship beyond that normally experienced upon adjustment to a new country and culture. Based on the information contained in the Consular Information Sheet, the AAO finds that the applicant has established that his wife would suffer extreme hardship if she moved to Iran with the applicant.

In spite of the above finding, however, the applicant does not qualify for a waiver of the grounds of his inadmissibility under section 212(h) of the Act, as the AAO finds that the applicant has failed to establish his wife would suffer extreme hardship if his waiver of inadmissibility were denied and she remained in the United States. Simple family separation does not constitute hardship that goes beyond the common results of removal of an alien. The present record is devoid of any medical evidence to corroborate the assertion that the applicant's wife is unable to work due to her mental state, or to corroborate the assertion that the applicant's wife suffers from depression. In addition, the record contains no financial information to support the applicant's assertion that he is the sole provider in his household. Furthermore, the AAO notes the U.S. Supreme Court holding that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981). Having found the applicant ineligible for relief, the AAO notes no purpose in discussing whether the applicant merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. A review of the evidence in the record, when considered in its totality, reflects that the applicant has failed to establish that if they remained in the United States, his wife or other qualifying family members would suffer hardship beyond that which would normally be expected upon removal of an alien. Because the applicant has failed to establish that he qualifies for relief under section 212(h) of the Act, the appeal will be dismissed and the application denied.

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