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



U.S. Citizenship  
and Immigration  
Services

H2

FILE: Office: DALLAS, TEXAS Date: AUG 03 2009

IN RE:

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.

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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 committed crimes involving moral turpitude. The applicant is married to a U.S. citizen and 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 with his U.S. citizen spouse.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility to the United States. *Form I-601 Decision*, dated June 13, 2006.

On appeal, counsel states that the district director erred in finding that the applicant failed to establish that his spouse would suffer extreme hardship as a result of his inadmissibility. *Form I-290B*, dated July 13, 2006. Counsel states that the district director erred in not considering the applicant's medical condition and the hardship it would cause. Counsel also states that the applicant's Form I-601 and Form I-212 were not processed in accordance with 8 C.F.R. 212.2(d).

8 C.F.R. 212.2 states, in pertinent part:

(d) Applicant for immigrant visa. Except as provided in paragraph (g)(3) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. If the applicant also requires a waiver under section 212(g) , (h) , or (i) of the Act, Form I-601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I-212 with the American consul having jurisdiction over the alien's place of residence. The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which the consul is located.

(g) Other applicants.

(1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must file Form I-212. This form is filed with either:

(i) The district director having jurisdiction over the place where the deportation or removal proceedings were held; or

- (ii) The district director who exercised or is exercising jurisdiction over the applicant's most recent proceeding.

The AAO notes that C.F.R. 212.2(d) does not apply to the applicant because the applicant is physically present in the United States and he is applying for adjustment of status, not an immigrant visa. Moreover, the applicant's Form I-601 and Form I-212 were properly processed by the district office in Dallas, Texas in accordance with C.F.R. 212.2(g)(1), and separate decisions were issued to the applicant. The AAO notes that the applicant has filed only one Form I-290B Notice of Appeal. In accordance with the policy articulated in section 43.2 of the USCIS Adjudicator's Field Manual, the AAO will adjudicate the applicant's appeal as it pertains to the decision denying his Form I-601.

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 Board of Immigration Appeals (BIA) 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. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703. Finally, in all such inquiries, the burden is on the alien to establish “clearly and beyond doubt” that he is “not inadmissible.” *Id.* at 709 (citing *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008))

The record shows that the applicant was arrested in Gregg County, Texas on January 2, 1994 and charged with Aggravated Assault on a Peace Officer. He was found guilty for this charge on July 18, 1994 and was sentenced to five years probation. On March 29, 1994 in Smith County, Texas the applicant was charged with Fraudulent Removal of Writing under Texas Penal Code section 33.47. He was found guilty of this offense on June 3, 1994 and was sentenced to one year probation and a \$300 fine. On June 6, 1995 the applicant was arrested in Tyler, Texas and charged with Failure to Identify, a misdemeanor and on September 1, 1995 the applicant was found guilty of this offense and was sentenced to thirty days confinement and a \$400 fine.

At the time of the applicant's conviction Texas Penal Code section 22.02 provided, in pertinent parts:

- (a) A person commits an offense if the person commits assault as defined in § 22.01 and the person:
  - (1) causes serious bodily injury to another, including the person's spouse; or
  - (2) uses or exhibits a deadly weapon during the commission of the assault.
  
- (b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the offense is committed:
  - ....
  - (2) against a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or
  - ....
  
- (c) The actor is presumed to have known the person assaulted was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

Assault on a law enforcement officer has been found to be a crime involving moral turpitude where the perpetrator knows the victim to be a law enforcement officer performing his official duty and the assault results in bodily injury to the officer. *See Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988) (distinguishing cases in which knowledge of the police officer's status was not an element of the crime and where bodily injury or other aggravating factors were not present to elevate offense beyond "simple" assault); *see also Matter of O-*, 4 I&N Dec. 301 (BIA 1951) (German law involving an assault on a police officer was not a crime involving moral turpitude because knowledge that the person assaulted was a police officer engaged in the performance of

his duties was not an element of the crime); *Matter of B-*, 5 I&N Dec. 538 (BIA 1953) (as modified by *Matter of Danesh, supra.*) (assault on prison guard not a crime involving moral turpitude because offense charged appeared to be only "simple" assault and no bodily injury was alleged); *Ciambelli ex rel. Maranci v. Johnson*, 12 F.2d 465 (D. Mass 1926) (assault on an officer was not a crime involving moral turpitude in spite of fact that defendant was armed with a razor because the razor was not used in the assault). Furthermore, in *Matter of O-*, 3 I&N Dec. 193 (BIA 1948) and *Matter of Montenegro*, 20 I&N Dec. 603 (BIA 1992), the Board of Immigration Appeals (BIA) held that assault with a weapon is a crime involving moral turpitude. By the language of the statute, the AAO finds that the applicant committed an assault on a peace officer and in the commission of this crime either the peace officer was seriously injured or a deadly weapon was used or exhibited. The AAO notes that either fact pattern would result in a determination that the applicant committed a crime involving moral turpitude. Thus, the applicant's conviction for Aggravated Assault on a Peace Officer is a crime involving moral turpitude.

At the time of the applicant's 1994 conviction for Fraudulent Removal of Writing under Texas Penal Code section 32.47, the statute stated:

(a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

- (1) printing or any other method of recording information;
- (2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;
- (3) symbols of value, right, privilege, or identification; and
- (4) labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d), an offense under this section is a Class A misdemeanor.

The complaint, dated May 2, 1994, states that the applicant committed fraudulent removal of writing by removing a price tag and replacing it with a lower price tag. The AAO notes that any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), *cert denied*, 383 U.S. 915 (1966). Thus, the applicant's conviction for Fraudulent Removal of Writing is a crime involving moral turpitude.

At the time of the applicant's 1995 conviction for Failure to Identify under Texas Penal Code section 38.02, the statute stated:

- (a) A person commits an offense if he intentionally refuses to give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.
- (b) A person commits an offense if he intentionally gives a false or fictitious name, residence address, or date of birth to a peace officer who has:
  - (1) lawfully arrested the person;
  - (2) lawfully detained the person; or
  - (3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

The AAO notes that the Arrest Report for this conviction states that the applicant, when being arrested as a fugitive of justice gave a false name and date of birth to a police officer in order to avoid apprehension. The AAO notes that the Seventh Circuit Court of Appeals held in a case similar to the applicant's that furnishing false information to a police officer in order to avoid apprehension was a crime involving moral turpitude. *See Padilla v. Gonzales*, 397 F.3d 1016 (7th Cir. 2005). The applicant is therefore inadmissible for committing three crimes involving moral turpitude. The applicant has not disputed his inadmissibility on appeal.

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), (B), . . . of subsection (a)(2) . . . if –

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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 . . . .

Two of the applicant's convictions for crimes involving moral turpitude were based on actions taken by the applicant in 1994, more than fifteen years ago. However, the applicant's last conviction was based on actions that occurred in June 1995, less than fifteen years ago, thus making him ineligible to apply for a waiver under 212(h)(1)(A) of Act. The applicant is eligible to apply for a waiver under section 212(h)(1)(B) of Act.

A section 212(h)(1)(B) waiver of inadmissibility 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 considered in section 212(h) waiver proceedings and will be considered only insofar as it is established that hardship to the applicant is causing hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, in this case the applicant's U.S. citizen spouse or children, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also 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 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 the applicant's spouse must be established in the event that she accompanies the applicant and resides in Mexico and in the event that she 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 hardship includes medical documentation concerning the applicant's spouse and her ability to become pregnant. The documentation from a [REDACTED] at Trinity Clinic Family Practices, dated January 19, 2002, shows that the applicant's spouse was being treated for hyperprolactinemia in relation to her attempts to conceive a child. The record also contains a letter from a [REDACTED], dated November 14, 2001 that states she has been treating the patient for menstrual dysfunction. The AAO notes that the applicant's spouse submitted two letters, one dated April 19, 2004, and the second dated August 8, 2006. In both she states that she needs the applicant in the United States for financial, medical, and emotional reasons. She states that she cannot handle all the bills and debts without the applicant. She also states that she has been diagnosed with a benign tumor that causes problems with her prolactin levels and for which she is required to take medication costing \$900 every three months. The AAO notes that the record contains a copy of the applicant's spouse's prescription showing that the total cost for her prescription is \$893.31, but that she is only responsible to pay \$75.00. In her statement the applicant's spouse also states that she and the applicant have been married for nine years and that without him in the United States they will lose everything they worked so hard for. She states that the applicant owns a business as a house framer in the United States and needs to return to continue his business.

The AAO notes that the record of hardship also includes the 2005 Department of State Country Reports on Human Rights Practices in Mexico. The AAO finds this report to give a broad overview of human rights throughout the country of Mexico in 2005. However, the AAO also finds that the record of hardship does not include any statements made by counsel, the applicant, or the applicant's spouse for which this report is being submitted to substantiate. Without having statements of hardship in the record in regards to the applicant's spouse relocating to Mexico, this report has little probative value. The record does not include any information detailing the specific circumstances the applicant and his spouse will face upon relocation to Mexico. Thus, the AAO finds that the record does not show that the applicant's spouse would suffer extreme hardship upon relocation to Mexico.

Furthermore, the record lacks documentation for a finding that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant. The record shows that the applicant's spouse has been employed as a parole officer since 1999. The record also shows that the applicant and her spouse own various properties in Texas, but the record does not show that the applicant's spouse would suffer extreme financial hardship as a result of being separated from the applicant. It should be noted that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss, decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a

significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the “economic” character of the hardship makes it no less severe.”). The AAO finds that, beyond general statements, the record does not contain any detail concerning the impact of separation on the applicant’s spouse’s personal and emotional well-being. 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)).

Therefore, the AAO finds that the applicant has failed to show that his spouse would suffer extreme hardship as a result of his inadmissibility.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s spouse caused by the applicant’s inadmissibility to the United States. The AAO notes that the record contains several letters of recommendation concerning the applicant’s good moral character. The AAO also notes that all three crimes committed by the applicant occurred when he was eighteen and nineteen years old. However, 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(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.