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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

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FILE:



Office: WASHINGTON

Date:

AUG 24 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 or reopen, 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 Field Office Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru, the son of a U.S. citizen and a lawful permanent resident (LPR), and the beneficiary of an approved Form I-130 petition. The Form I-601 waiver application also indicates that the applicant has one LPR brother and one LPR sister living in the United States. The field office director found the applicant 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 seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen son. The director also found that the applicant had failed to establish that denial of the waiver application would impose extreme hardship on any qualifying relative, and denied the waiver application.

On appeal, counsel asserted that the applicant's parents would suffer extreme hardship if he is not permitted to remain in the United States. The entire record has been reviewed in rendering a decision on the appeal. Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

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.)

1. On March 10, 2001, in Herndon, Virginia, the applicant was arrested for driving under the influence. On May 2, 2001 the applicant was convicted, pursuant to his plea, of that offense. The applicant was fined and sentenced to 60 days confinement, which was suspended. The applicant's driver's license was suspended for one year and he was placed on one year of probation. [REDACTED]

2. On February 21, 2003, in Fairfax County, Virginia, the applicant was arrested for driving while his license was suspended. The applicant was convicted, pursuant to his plea, of that offense. He was sentenced to 365 days confinement, which was suspended. He was fined and placed on three years inactive probation, and his driver's license was suspended for three years. [REDACTED]

3. On February 21, 2004, in Fairfax County, Virginia, the applicant was arrested for driving while his license was suspended; for a violation of Virginia Code § 18.2-186.3, use of the identification or identifying information of another to avoid summons or prosecution, or to impede a criminal investigation; and for a violation of Virginia Code § 18.2-168, forging a public record, certificate, return, attestation of a public officer or public employee, in relation to a matter in wherein such certificate, return, or attestation was received as legal proof. [REDACTED]

[REDACTED] On February 27, 2004, the applicant was arrested for another count of violating section 18.2-186.3, identification fraud. On March 18, 2004, in Fairfax County, Virginia, a bench warrant was issued for the applicant for failure to appear in court on March 17, 2004 to answer to the forgery and identification fraud charges. On April 5, 2004, in Fairfax County, Virginia, the applicant was arrested for driving while his license was suspended. [REDACTED]

On June 15, 2004, the applicant was convicted, pursuant to his pleas, of one count of identification fraud. On July 21, 2004, the applicant was convicted, pursuant to his plea, of the forgery charge. The remaining charges appear to have been dismissed. [REDACTED] On December 10, 2004, the applicant was sentenced to two years confinement, of which one year and five months was suspended. [REDACTED]

Forgery is a crime involving moral turpitude. *Matter of Seda*, 17 I. & N. Dec. 550 (BIA 1980), Georgia; *Animashaun v. INS*, 990 F.2d 234 (5th Cir. 1993), Alabama Criminal Code; *Balogun v. Ashcroft*, 270 F.3d 274 (5th Cir. 2001); *Morales-Carrera v. Ashcroft*, 74 F.3d Appx. 324 (5th Cir. 2003).

In an undated declaration in the record, the applicant indicated that his convictions in number three, above, stem from his presenting another person's drivers license as his own when he was caught driving while his license was suspended. The applicant indicated that his presentation of that other person's license was a spontaneous, impetuous action, occasioned by the exigency of the moment. The applicant did not explain the purpose for which he was then carrying that other person's license. Further, the record appears to show that he was charged with identification fraud on two separate occasions.

The record contains a copy of the applicant's birth certificate, which shows that he was born on November 3, 1981, and was therefore over 18 years old on February 21, 2004, when he committed the forgery offense in number three, above. Further, the applicant was sentenced to two years of confinement. Therefore, the applicant is not eligible for any of the exceptions shown at section 212(a)(2)(A)(i)(I) and (II).

The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, 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 [section 212(a)(2)(A)(i)(I) of the Act]

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

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's parents. Hardship to the applicant himself or to his siblings is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted.) Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or 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 contains an undated declaration from the applicant, as was noted above. In it, he stated that his father has suffered diabetes and lower back pain for years. He stated that he cares for his parents, who are in their fifties, providing them financial and other assistance. He stated, "Without me, my family would be devastated as I am the one who cares for our parents and our youngest sister, [REDACTED]"

The applicant also stated that he has nine siblings in the United States. He did not explain why none of his siblings would be able to render assistance to his parents and sister in the event of his removal from the United States.

The record contains a letter, dated January 8, 2006, from the applicant's father. The applicant's father stated that he has osteoporosis and diabetes and that his wife, the applicant's mother, is also in delicate health. He stated that he fears the removal of the applicant.

The record contains a letter, dated January 9, 2006, from the applicant's mother. She stated that she feels ill and depressed and cannot sleep because she worries about the removal of the applicant and the economic difficulties she, her husband, and her daughter will face. She stated that she has back problems.

The record contains letters from friends and coworkers of the applicant. They are largely character references. They also state that the applicant is working at two full-time jobs and that his mother, father, and sister live with him. A letter, dated January 2, 2007, from a high school in Falls Church, Virginia, states that the applicant is listed as his sister's primary emergency contact.

The record contains the first page of the joint 2002 Form 1040 of the applicant and his wife. That return shows that the applicant and his wife declared \$26,857 in total income during that year. The applicant did not claim either his parents or his sister as dependents during that year. Attached Form W-2 Wage and Tax Statements confirm that the applicant earned the total income he and his wife claimed during 2002. Three W-2 forms from the same employer show amounts paid to the applicant through three different social security numbers. The significance of the applicant's use of three social security numbers with a single employer during a single year is unknown to the AAO.

The record contains portions of the 2003 and 2004 joint tax returns of the applicant and his wife. Those returns show that the applicant and his wife, together, earned total income of \$42,630 and \$36,339 during those years, respectively. W-2 forms submitted that, of those amounts, the applicant himself earned \$40,267 and \$12,098.

Medical evidence provided shows that the applicant's father has been examined for lower back pain, that he received an MRI and a Sonogram in attempting to diagnose the cause, and that he has been treated with a muscle relaxing drug, two nonsteroidal anti-inflammatories, an antacid, and an antifungal cream. Results of blood chemistry analysis show that the applicant's father has high cholesterol.

The record contains a settlement sheet and other documents pertinent to the applicant's September 27, 2005 purchase of the property where the applicant now lives. An initial escrow account statement shows that the applicant's monthly mortgage payments were then \$2,782.03.

The record contains printouts of website content pertinent to conditions in Peru. The website content includes a United States Department of State report on human rights practices in Peru; an account of the ideology and history of Tupac Amaru, a revolutionary movement in Peru; information from a USCIS site about El Sendero Luminoso, another revolutionary group; a Wikipedia entry pertinent to El Sendero Luminoso; a Wikipedia entry pertinent to Peru in general; a speech that Peru's president presented in 2002 to the United Nations General Assembly on Children; a BBC news article about a 2005 rally in opposition to the president, Alberto Fujimori; information from various sites pertinent to Peru's economy; and an article from La Nueva Bandera, a communist newsletter, about alleged involvement of the Peruvian government in narcotics production and smuggling.

In the undated brief provided with a motion to reconsider the denial of the Form I-485, counsel stated that the political and economic turmoil in Peru would cause the applicant's parents to worry for his security.

In the undated brief filed with the motion to reconsider the denial of the Form I-485 petition, counsel stated that the applicant has eight siblings in the United States. In the applicant's undated statement, he indicated that he has nine siblings in the United States. The Form I-601 in the record indicates that at least two of the applicant's siblings live at the same address as the applicant and his parents.

In the brief submitted on appeal, counsel reiterated the assertion that failure to approve the applicant's waiver application would result in extreme hardship to his parents.

Initially, the AAO will address the claims of medical hardship that would result to the applicant's parents if the applicant is removed to Peru. The applicant has demonstrated that his father had undergone an examination and tests pertinent to back pain and that he has high cholesterol. The seriousness of those conditions is not in evidence. Although the applicant claimed in his undated declaration that his father has diabetes, and his father claims to have osteoporosis, the record contains no evidence in support of those assertions or to document the severity of those alleged conditions. The applicant's father and his mother both claim that the applicant's mother also has back problems. The applicant's father adds that she is in general ill health. The record contains no evidence to support those assertions.

Although statements by the applicant his parents are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)). The evidence in the record does not support that the applicant's parents health is such that his removal to Peru will cause them medical hardship which, when considered together with the other hardship factors in this case, rises to the level of extreme hardship.

The emotional hardship to be suffered by the applicant's parents is a closely-related consideration. The applicant's parents have both asserted that they fear the removal of the applicant, but without any more specificity. The applicant's mother stated that she feels ill and depressed and has insomnia from her concern for the applicant, again, without reference to a specific concern, and without any supporting evidence pertinent to her claimed malaise, depression, or insomnia, or the seriousness of those claimed conditions. The AAO will consider that the applicant's parents would miss him very much, as would parents generally if obliged to part from their children.

Although the assertion is not supported by the parents' statements, counsel implies that country conditions in Peru are a source of the parents' concern for their son. The conditions described in the web content counsel provided are both economic and political.

The economic conditions would affect the applicant if he were unable to obtain suitable employment in Peru. The evidence pertinent to the economy of Peru shows that, in the recent past, Peru has suffered from recessions and inflation. The evidence provided by counsel does not include any

evidence to demonstrate that the applicant, who was born in Peru and has worked there in the past,¹ would be unable to obtain suitable employment there.

The political conditions in Peru have included, in the recent past, atrocities committed by insurgencies and the Peruvian security forces and a hostage incident at an embassy. Other than the incident at the embassy, the violence appears to be concentrated in the countryside, rather than in the cities. The applicant's Form G-325 indicates that he lived in Lima, the capital city of Peru, from his birth until May of 1998, when he came to the United States.

The record does not include evidence sufficient to show that conditions in Peru are such that, if the applicant is obliged to return there, his parents will suffer as a result of their concern pertinent to his life under those conditions.

The financial hardship that would result to the parents if the applicant is removed to Peru is another major consideration.

The applicant's mother stated that she is concerned that she and the applicant's father may be unable to pay their bills alone. The record contains no indication of the amount of the applicant's parents' income and no list of recurring monthly expenses. The AAO is unable, therefore, to consider whether their income is sufficient to pay their expenses without the applicant's assistance. Although counsel stated that the applicant's father and mother are "[p]revented from working much due to their physical state. . . ." the medical evidence in the record does not demonstrate that they are disabled, either totally or partially.

Further, even if the evidence submitted showed that the applicant's parents were unable to support themselves, or unable to take care of their own medical needs, the evidence shows that either eight or nine of their children, in addition to the applicant, are living in the United States, and that two of those children, in addition to the applicant, are living with them. No evidence appears in the record to show that the other siblings could not provide their parents with some assistance.

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 parents face extreme hardship if the applicant is refused admission. Rather, the record suggests that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a child is removed from the United States.

The record demonstrates that the applicant has loving and devoted family members who are concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common

¹ On his G-325 Biographic Information form, the applicant indicated that he worked as a cook in Lima from January 1996 to October 1997.

parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one’s spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship.

The U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen and lawful permanent resident parents as required under INA § 212(h), 8 U.S.C. § 1186(h) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.