



U.S. Citizenship  
and Immigration  
Services

H2

[REDACTED]

FILE:

[REDACTED]

Office: TEGUCIGULPA, HONDURAS

Date:

DEC 03 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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge (OIC), Tegucigalpa, Honduras. 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 Cuba, and a permanent resident of Costa Rica. 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 Crimes Involving Moral Turpitude (CIMT). The applicant is the child of a naturalized U.S. Citizen (USC) father and a Lawful Permanent Resident (LPR) mother. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The OIC 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 April 17, 2007.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act as the record does not establish that she was convicted of a crime involving moral turpitude. Alternately, he states that the record fails to show that the offense of which the applicant was convicted would not be subject to the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act. Counsel also contends that the OIC erred in considering only the hardship to the applicant's father when the applicant's mother is an LPR and, therefore, also a qualifying relative.

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 -

....

(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 was convicted of Use of a Fraudulent Document, in Alajuela, Costa Rica, in 1997. The OIC concluded that the applicant had been convicted of a Crime Involving Moral Turpitude (CIMT), and was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

In order for a foreign conviction to serve as a basis for a finding of inadmissibility, the conviction must be for conduct deemed criminal by U.S. standards. *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). The act for which the applicant was convicted in Costa Rica is a crime in the United States. See 18 U.S.C. §§ 1028(a)(4), 1426(b). Further, in the United States, any crime involving fraud is a CIMT. *Burr v. INS*, 350 F.2d 87, 91 (9<sup>th</sup> Cir. 1965), *cert denied*, 383 U.S. 915 (1966). As such, the applicant has been convicted of a CIMT. The record contains a copy of the Costa Rican statute in question, indicating that the crime committed by the applicant is punishable by one to six years in prison. The applicant's conviction does not, therefore, qualify for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. Accordingly, the applicant is inadmissible to the United States under section 212(a)(2)(i)(I) of the Act and must seek a waiver of inadmissibility under section 212(h) of the Act.

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 parents are the only qualifying relatives in this proceeding. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 any evaluation of extreme hardship to a qualifying relative should consider the impacts on that qualifying relative 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 includes, but is not limited to, a brief from counsel; statements from the applicant's USC father; a statement from [REDACTED]; a copy of a property deed assigned to the applicant's father; an employment letter for the applicant's father; a copy of a social security statement for the applicant's father; a copy of the naturalization certificate for the applicant's father; and a copy of the LPR card for the applicant's mother.

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

Counsel asserts on appeal that it would constitute an extreme hardship on the applicant's father if the applicant were excluded, that he cannot imagine continuing to live separately from his daughter and granddaughter. He further asserts that the applicant, although gainfully employed in Costa Rica, wishes to further her career, which she cannot do as the sole financial support for her daughter, and that if the applicant and her daughter, who have medical conditions, were in the United States they would have access to better healthcare and a stronger family relationship.

The applicant's father states that he misses his daughter and granddaughter intensely, and that they suffer from certain medical conditions that could be better treated in the United States. He further states that he wishes to retire in a few years, which he cannot do if his daughter is not allowed to enter the United States and help support him financially, and that his daughter and granddaughter will miss out on opportunities for higher education in the United States. While the AAO acknowledges the assertions and sentiments of the applicant's father, his perception that he would be unable to retire without the presence of the applicant in the United States is not supported by documentary evidence in the record. The record also fails to document that the applicant and her daughter suffer from any medical conditions that require treatment. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Further, as previously indicated, hardship to the applicant or her daughter is not directly relevant to a determination of extreme hardship in these proceedings and the record fails to establish how any hardships they might experience as a result of the denial of waiver application would result in hardship to the applicant's parents.

The record contains a letter from [REDACTED] dated May 4, 2007, who states that he has been treating the applicant's father since 1997 and that he suffers from several medical conditions, including hypertension, insomnia, anxiety, depression and tension headaches. [REDACTED] states that it is his opinion that these conditions have changed in pattern and increased in intensity as a result of the stress created by the applicant's inadmissibility. [REDACTED] further states that separation from the applicant will be an extreme hardship on her father's health and lead to further mental anguish. While the AAO notes [REDACTED] statements, it observes that he has offered no

evaluation of the severity of the conditions affecting the applicant's father, whether the applicant's father requires medication for these conditions, the extent to which these medications have been successful in treating his medical conditions, or how his conditions affect his ability to function on a daily basis. In the absence of further information, the AAO is unable to determine the physical status of the applicant's father or the extent to which his continued separation from the applicant would affect his health.

The record also contains a statement from [REDACTED] asserting that the applicant's father and mother have been under excruciating stress based on the applicant's exclusion. She recounts the fears of the applicant as relayed to her by the applicant's father, reports that the applicant's father is afraid he will have to continue working beyond the age of 65 if his daughter is not allowed to immigrate to the United States to support him, that the emotional stress has affected his ability to concentrate, and that he worries that his symptoms will worsen and put his job at risk. [REDACTED] further reports that the applicant's mother has been traveling back and forth between Costa Rica as she does not want to leave the applicant alone for too long because of her health issues. [REDACTED] states that the applicant's mother feels guilt because she cannot take care of the applicant at all times, feels her life is not complete, and reports that she has cried every day since her separation from her daughter. Based on this reporting, [REDACTED] concludes that the applicant's father is suffering from anxiety and depression as a result of the applicant's inadmissibility to the United States and that these conditions are causing impairment in social, occupational and other areas of functioning. She states that the applicant's mother has a similar condition. [REDACTED] concludes that the applicant's father is already suffering extreme hardship because the applicant has not been allowed to enter the United States.

The AAO will not accept [REDACTED] finding concerning extreme hardship as the determination of extreme hardship in this proceeding is a legal conclusion to be reached by United States Citizenship and Immigration Services (USCIS). Further, while the AAO acknowledges that [REDACTED] has found the applicant's parents to be suffering from depression and anxiety as a result of their separation from the applicant, it notes that her conclusions are the result of a single interview with the applicant's parents. In that they are based on one interview, the AAO finds these conclusions to lack the insight and elaboration commensurate with an established relationship with a licensed mental health practitioner, thereby rendering them speculative and diminishing their value to a determination of extreme hardship.

An examination of the record reveals that there is no evidence of significant financial hardship, no evidence that the applicant's parents are physically dependent on the applicant's presence, or that they are experiencing any emotional hardship that rises above that normally experienced by the relatives of excluded aliens. As such, the record fails to establish that either of the applicant's parents would suffer extreme hardship if she is excluded from the United States and they remain.

As previously discussed, a determination of extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. In his brief, counsel asserts that the applicant's father suffers from medical conditions that preclude him from relocating to Costa Rica to be with the applicant. Counsel further asserts that the applicant's age would make it extremely

difficult for him to find a job and that, if he did obtain employment, he would not earn as much and would be unable to support his family in the United States and his daughter in Costa Rica. Counsel also contends that moving to Costa Rica would force the applicant's father to abandon his family and life in the United States, and that life in Costa Rica would be difficult because of the high levels of crime and its unfamiliar customs and culture. The record contains a statement from a medical practitioner treating the applicant's father stating that he has several medical conditions. However, this statement does not indicate the severity of these medical conditions or that the applicant's father could not receive treatment for these conditions outside the United States. The record also includes no country conditions materials that demonstrate that the applicant's father would be unable to obtain treatment for his stated health problems in Costa Rica. The AAO further notes that the record fails to offer proof that the applicant's father would be unable to live on his retirement income in Costa Rica if he were ultimately unable to obtain employment there. There is also no documentary evidence in the record of the high levels of crime in Costa Rica or that the applicant's parents would be unable to adapt to the customs and culture of Costa Rica. During their interview with [REDACTED], the applicant's parents reported that the applicant's mother had lived in Costa Rica for several years before immigrating to the United States.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardship factors described in the record do not support a finding that either of the applicant's parents would face extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's parents will suffer hardship as a result of her inadmissibility. The record, however, does not distinguish their hardship from that commonly associated with removal or exclusion and it does not, therefore, rise to the level of "extreme" as informed by relevant precedent. 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. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.