



U.S. Citizenship
and Immigration
Services

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FILE:

Office: PORTLAND

Date:

DEC 09 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Oregon. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mexico. He 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 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. lawful permanent resident spouse and U.S. citizen child.

The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the director proffered an overly restrictive and exceedingly narrow interpretation of the statute, the director relied on precedent decisions that do not confirm with Ninth Circuit precedent, the director misstated and mischaracterized facts and evidence in the record, the applicant demonstrated that his wife will suffer extreme hardship if his waiver is denied, and the director did not consider all the evidence in the record.

In support of the application, the record contains, but is not limited to, a brief from counsel, court records, financial records, county condition reports, photographs, a mental health assessment, medical records, a letter from the applicant, a letter from the applicant's spouse, a letter from the applicant's pastor, and attestations regarding the applicant's good character. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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.)

The director found the applicant inadmissible for having been convicted of three crimes involving moral turpitude. The applicant has not disputed this determination on appeal.

The record shows that the applicant was convicted in the Washington County District Court, Oregon, on December 21, 1994, of theft in the third degree in violation of section 164.043 of the Oregon Revised Statutes (Or. Rev. Stat.), a Class C misdemeanor punishable by a maximum of 30 days imprisonment (case number D9407785M). The record further shows that the applicant was convicted in the Washington County District Court, Oregon, on December 19, 1997, of theft in the second degree in violation of Or. Rev. Stat. § 164.045, a Class A misdemeanor punishable by a maximum of one year imprisonment [REDACTED]. Lastly, the record shows that the applicant was convicted in the Washington County Circuit Court, Oregon, on May 11, 1998, of theft in the third degree in violation of Or. Rev. Stat. § 164.043, a Class C misdemeanor punishable by a maximum of 30 days imprisonment [REDACTED].

The AAO has reviewed the statutes, case law and other documents related to these convictions, as well as the relevant precedent decisions from the Board of Immigration Appeals and the courts. The AAO concurs with the director that the applicant has been convicted of three crimes involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act.

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 –

. . . .

(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

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. Hardship to the applicant himself is not 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 reflects that the applicant wed [REDACTED] a citizen of Mexico and U.S. lawful permanent resident, on May 30, 1998. The applicant's spouse is a qualifying family member for section 212(h) of the Act extreme hardship purposes.

The AAO notes that the applicant listed his child, [REDACTED] as a qualifying relative on his Form I-601 waiver application. However, the record does not contain evidence of [REDACTED] identity and immigration status. Nor does the record contain evidence of hardship to [REDACTED] if the applicant is denied a waiver of inadmissibility. The AAO will therefore only consider hardship to the applicant's spouse for purposes of these proceedings.

On appeal, counsel asserts that the applicant's spouse has had three head injuries from her employment at a sawmill and she continues to suffer from pain resulting from these injuries. Counsel states that the applicant's spouse suffers from reduced cognitive abilities that impact her ability to function on a daily basis. Counsel states that the applicant's spouse was recently diagnosed with major depression. Counsel states that the applicant's spouse relies solely on the applicant to assist her with her numerous symptoms and medical needs. Counsel states that the applicant is the principle financial supporter of the family because his spouse cannot work due to her health conditions. Counsel states that the applicant's spouse relies on the applicant for financial stability.

The record contains the following documentary evidence related to the applicant's spouse's medical conditions:

- A medical assessment of the applicant's spouse from [REDACTED], of the Neurological Clinic, Portland, Oregon, dated January 17, 2006. [REDACTED] noted that the applicant's spouse reported severe hip pain, pounding on her head and persistent headaches. He stated that his diagnostic impression of the applicant's spouse's condition is that she is suffering from posttraumatic headache disorder, by history; chronic cervicothoracic and lumbar pain/strain, by history; and left temporomandibular joint pain. [REDACTED] indicated that the applicant's spouse continues to exhibit diffuse tenderness and myofascial discomfort with even light palpation of the head, neck, spine and shoulders. [REDACTED] noted that the applicant's spouse was taking Topamax, Vicodin and Flexeril to treat her symptoms. He increased her dosages of Trazodone and Topamax.
- A medical assessment of the applicant's spouse from [REDACTED] dated April 22, 2005. [REDACTED] noted in his assessment that the applicant's spouse has suffered from three work related injuries as a wood cutter and packer. He stated that on May 10, 2004, the applicant's spouse was hit on the top of her head by a piece of wood thought to weigh ten pounds. He stated that at the end of the summer she went temporarily unconscious as a result of being hit in the head with an eight-foot long board. [REDACTED] stated that his diagnostic impression of the applicant's spouse's condition is that she has suffered two concussions, post-traumatic headaches that have worsened following the second injury, and neck and back pain.

- A medical assessment of the applicant's spouse from [REDACTED] of the Rehabilitation Medicine Associates, P.C., Portland, Oregon, dated May 3, 2007. [REDACTED] noted that the applicant's spouse was suffering from persistent daily headaches and insomnia. [REDACTED] noted that the applicant's spouse's headaches became worse after she was rear ended in a motor vehicle accident on September 11, 2006. [REDACTED] assessed the applicant's spouse as suffering from cervical strain with concussion, post concussive headache and lumbar strain.
- A physician clinical report from the emergency services department of Legacy Good Samaritan Hospital, Portland, Oregon, dated July 16, 2005. The emergency room physician noted that his clinical impression of the applicant's spouse was that she was suffering from a migraine headache.

The AAO notes that counsel's claim that the applicant cannot work due to her medical conditions is not supported by the record. Although the applicant's spouse states in her letter, dated October 1, 2007, that, "I am unable to work due to my health conditions," evidence in the record reflects otherwise. The aforementioned May 3, 2007 assessment from [REDACTED] states that the applicant's spouse is "Currently working medium to heavy work in a nursery setting. States she has attempted to find light duty, but could never secure it." The AAO acknowledges that the applicant's spouse could be working part-time or she could have since left her position at the nursery. However, the record fails to provide a clear and concise picture of the applicant's spouse's employment history. 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)). Accordingly, the AAO cannot determine whether the applicant's spouse would suffer financial hardship if the applicant's waiver is denied and she remains in the United States separated from the applicant.

However, the AAO observes that the medical documentation contained in the record establishes that the applicant's spouse's work injuries have resulted in her suffering from chronic body pain and headaches, which she manages with a number of prescription medications. A mental health assessment of the applicant's spouse from [REDACTED] dated October 8, 2007, reflects that the applicant's spouse's physical ailments have triggered clinical depression. He noted that, "It is difficult to determine the exact source of the depression which [REDACTED] suffers from, whether it emanated from the head injury itself or the emotional reaction to the debilitating effects of the head injury." [REDACTED] stated that the applicant's spouse's symptoms include, "a feeling of desperation, anhedonia or lack of pleasure, sadness accompanied by frequent crying spells, a sense of worthlessness, low motivation, lowered libido, weight gain and a pervasive general tiredness" and sleep problems. [REDACTED] diagnosed the applicant's spouse as having major depressive disorder, single episode, severe. [REDACTED] noted that the applicant assists his spouse with her medical appointment schedules, and he handles their financial matters and house cleaning. He determined that the applicant's spouse's "cognitive abilities have been compromised by the head injuries received on the job, but . . . there has been no formal cognitive functioning evaluation." He stated that the applicant will need to assist his spouse in identifying and obtaining further care.

The AAO finds that the foregoing evidence establishes that the applicant's spouse is suffering from impaired cognitive abilities, chronic pain and depression. The evidence indicates that the applicant functions as his spouse's primary support system and provides daily assistance to her. The applicant's spouse noted in her letter that the applicant assists her with taking her medications, driving her to medical appointments, purchasing groceries, cooking meals and housework. She stated that there is no one else who can assist her on a daily basis. Given the applicant's spouse's dependence on the applicant to care for her daily needs, it has been established that she would suffer extreme hardship if the applicant's waiver is denied and she remains in the United States separated from him.

As discussed, extreme hardship to a qualifying relative must be established in the event that she remains in the United States or in the event that she accompanies the applicant abroad. In regard to the applicant's claim of extreme hardship to his spouse if she accompanies him to Mexico, counsel asserts that Mexico's standard of health care is not adequate to address the applicant's spouse's numerous health concerns. Counsel cites in her brief to "attached articles demonstrating inadequate health care in Mexico." Counsel states that the present economic situation of Mexico would exacerbate the matter substantially.

As corroborating evidence counsel furnished numerous reports on the status of health care and poverty in Mexico. However, counsel failed to specify how the findings in these reports are relevant to the instant case. The country condition reports are not highlighted nor are they specifically cited in counsel's brief. Counsel has failed to specify the medical hardships the applicant's spouse fears she would suffer in Mexico if she relocated there. The AAO notes that as a native and citizen of Mexico, the applicant's spouse should have little difficulty navigating the country's health care system. According to the U.S. Department of State's travel advisory on Mexico, "Adequate medical care can be found in major cities."¹ Further, there is nothing in the record to indicate that the applicant's spouse would receive inferior medical treatment in Mexico. Nor does the record reflect that her move to Mexico would interrupt a scheduled course of psychological and medical treatment. For these reasons, the AAO cannot conclude that the applicant's spouse would suffer extreme medical hardship if she relocated with the applicant to Mexico.

Similarly, counsel's assertion that Mexico's economic situation would exacerbate hardship to the applicant's spouse is purely speculative. Counsel has failed to provide any concrete details on the anticipated financial hardships the applicant's spouse fears she would suffer if she relocated to Mexico. The AAO notes that a reduction in an individual's standard of living does not necessary rise to the level of extreme hardship, but rather, is the type of hardship typically experienced upon relocation to another country. U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish 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); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family

¹ U.S. Department of State, Mexico: Country Specific Information, June 30, 2009.

members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. *The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.*'').

Finally, counsel asserts that the applicant's spouse has close family ties to the United States. Counsel states the applicant's spouse's two adult children have lived in the United States their entire adult lives. Counsel states that the applicant's spouse has not lived in the Mexico since 1989 and has few ties to Mexico.

The AAO acknowledges that the applicant's spouse would suffer emotional hardship as a result of her separation from her adult children if she relocated to Mexico. However, her situation is typical of individuals separated as a result of removal or inadmissibility, and does not, alone, rise to the level of extreme hardship. The AAO notes that United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. The Ninth Circuit Court of Appeals in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), held 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. In the present case, the applicant's spouse has not discussed any family obligations that would tie her to the United States. Her adult children would presumably be able to visit her in Mexico. Further, she should not face significant hardship in relocating to Mexico as she is a native and citizen of the country. She is presumably familiar with the language, culture and customs of Mexico. Accordingly, the AAO cannot conclude that the applicant's spouse would suffer extreme hardship if she relocated to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's qualifying family member, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(h) of the Act. 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(h) of the Act, the burden of establishing that the application merits approval 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.