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FILE:

Office: LOS ANGELES, CA

Date:

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IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a British national overseas, born in Hong Kong, who entered the United States with a nonimmigrant student visa in 1990. The applicant was found to be inadmissible to the United States pursuant to § 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 been convicted of crimes involving moral turpitude. The record indicates that the applicant has a U.S. citizen mother. She is the beneficiary of an approved petition for alien relative and seeks a waiver of inadmissibility in order to reside with her mother in the United States.

The district director denied the application after finding that the applicant had failed to establish extreme hardship to her U.S. citizen parent. *Decision of the District Director*, dated May 23, 2006 and *Amendment of the District Director*, dated August 16, 2006.

On appeal, counsel asserts that the submitted evidence establishes that the applicant's mother would suffer extreme hardship upon her removal. In support of his assertions, counsel submits a brief on appeal, dated June 16, 2006 (*Counsel's brief*), a response to the Amendment of the District Director, dated September 6, 2006 (*Counsel's response*), and statements from [REDACTED] the applicant's mother and [REDACTED], the applicant's brother, undated (*Statement of the applicant's mother* and *Statement of the applicant's brother*). The entire record was considered in rendering a decision on the appeal.

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

- (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) states 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)(A) [I]t is established to the satisfaction of the Attorney General that-
 - (i) [T]he 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 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 contains two court dispositions from the Superior Court of California, County of Los Angeles. The first reflects that on April 13, 2000, the applicant was convicted of Theft of Property, a misdemeanor, in violation of California Penal Code (PC) section 484(a) and of False ID to Peace Officer, a misdemeanor, in violation of PC section 148.9. She was sentenced to one year probation, 24 hours in jail and ten days community service. The second indicates that, on January 4, 2001, the applicant was convicted of burglary, a misdemeanor, in violation of PC Section 459, sentenced to ten days in jail and placed on three years probation. The district director concluded that these offenses constituted a crime(s) involving moral turpitude and rendered the applicant inadmissible.

Section 484(a) of the California Penal Code provides in pertinent part that:

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft.

Section 459 of the California Penal Code provides in pertinent part that:

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, ... with intent to commit grand or petit larceny or any felony is guilty of burglary.

In Matter of D, 1 I&N Dec. 143 (BIA 1941), the BIA held that while those theft crimes that include the deprivation of possession from the owner for a temporary period without intent to steal are not crimes involving mortal turpitude, those cases which would by their nature necessarily constitute theft or stealing as those offenses are known in common law, are crimes involving moral turpitude.

The language of section 484(a) of the California Penal Code (PC) clearly indicates that intent is an element of this offense and the record shows that the applicant was convicted of the theft of property under this section. Therefore, the AAO finds that the applicant's conviction for theft of property under section 484(a) of the PC is a conviction for a crime involving moral turpitude.

The AAO notes, however, that the applicant's conviction for burglary under section 459 of the PC may or may not be a conviction for a crime involving moral turpitude. The crime of burglary, as defined in section 459, encompasses crimes that involve moral turpitude and those that do not, as it covers individuals who enter with the intent to commit larceny/theft, a crime involving moral turpitude, and those who enter with the intent to commit any felony, which may or may not be a crime involving moral turpitude. When an alien is convicted under a statute that includes offenses that involve moral turpitude and others that do not, i.e., a divisible statute, the Board of Immigration Appeals has held that the courts and immigration authorities may look to the record of conviction in order to determine the offense for which the alien was convicted. *See Matter of Short*, 20 I&N Dec. 136 (BIA 1989). The court in *Matter of Short* included the indictment, plea, verdict, and sentence in its definition of the record of conviction. *Matter of Short*, at 137-38.

In the present case, the AAO notes that the record includes incident, security case and booking reports from the applicant's arrest and a history of the court proceedings that resulted in her conviction for burglary. However, the reports from the applicant's arrest may not be considered by the AAO as they do not fall within the record of conviction, leaving the history of proceedings that indicates only that the applicant was convicted of burglary under section 459 of the PC. Therefore, the AAO cannot determine whether the applicant's conviction for burglary was for a crime involving moral turpitude.

In that the burden of proving eligibility in 212(h) waiver proceedings rests entirely with the applicant, the AAO finds that she has not established that her conviction for burglary is not a conviction for a crime involving moral turpitude. Accordingly, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed crimes involving moral turpitude and must seek a waiver of inadmissibility under section 212(h)(1)(B).

A section 212(h)(1)(B) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter. Hardship an applicant or other relatives experience as a result of inadmissibility is not considered in section 212(h) waiver proceedings except to the extent that it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

The record reflects that the applicant is the daughter of a naturalized U.S. citizen. The statements from the applicant's mother and brother indicate that the applicant also has a father living with her U.S. citizen mother in the United States. However, no evidence was submitted to establish the applicant's father's status in the United States or his presence in the United States. Instead, the applicant indicated on her Form G-325A, Biographic Information, signed on December 8, 2003 that her father was currently living in Hong Kong, China. Therefore, the applicant's mother is the

qualifying family member in this proceeding, and the only relevant hardship in the present case is hardship suffered by the applicant's mother.

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 provides a list of factors relevant in determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(h) 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). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The AAO notes that extreme hardship to the applicant's mother must be established whether she resides in Hong Kong or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

On appeal, counsel contends that the applicant's mother would suffer extreme hardship financially and physically if the applicant were removed and she remained in the United States. Counsel states that the declarations of the applicant's mother and brother confirm that the applicant is indispensable to her parents, that the hardship to the applicant's mother is obvious and extreme, and that the applicant's mother is unable to function on a daily basis without the continuing assistance of the applicant. Counsel asserts that such life and death issues should be considered and that the evidence submitted in the record is sufficient to establish the applicant's mother's extreme hardship. In her statement, the applicant's mother asserts that she is 71 years old, she no longer has the ability to work and earn money to support herself or her husband, and she is unable to perform daily activities, like shopping for food or cleaning or cooking. She asserts that, without the support of the applicant, she and her husband would be in very desperate trouble, that the applicant provides money every month for her to pay the rent, utilities and grocery bill, and that the applicant also helps her with shopping, cleaning the house, washing clothes and cooking meals. The applicant's brother, in his

statement, notes his parents are old and will face more and more problems. He asserts, however, that he cannot help because he has his own family. He further asserts that his parents are still able to live an independent life but only with the applicant's continuing assistance with every part of their lives. Their living a decent life, he states, depends on the applicant.

While the AAO acknowledges the claims made by counsel and the applicant's mother and brother, it finds no documentary evidence has been submitted to support them, e.g., financial records to establish the income of the applicant's mother and medical records to demonstrate the diminished health of the applicant's mother and its impact on her ability to perform her daily responsibilities. As previously noted, the record does not establish that the applicant's father is residing in the United States with the applicant's mother or that he holds a lawful immigration status. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply 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)).

Furthermore, the applicant indicated on her Form I-601 signed on November 16, 2004 that a second brother, [REDACTED], was living with her and her mother. The record does not contain evidence to establish that this brother, who is listed as a lawful permanent resident, would be unable to support the applicant's mother financially in the applicant's absence or to provide her with the same type of daily assistance that is now the responsibility of the applicant. The AAO also notes that the record does not demonstrate that the applicant would be unable to obtain employment following her removal and assist her mother financially from outside the United States.

The AAO is mindful of and sensitive to the applicant's mother's concerns about maintaining her family and the hardship the applicant's mother will endure hardship if separated from the applicant. However, the record does not distinguish the applicant's mother's situation, if she remains in the United States, from that of other individuals separated as a result of removal. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See, e.g. Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)(upholding the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); and *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980)(severance of ties does not constitute extreme hardship). Therefore, the applicant has not established that her mother would suffer extreme hardship if the applicant's waiver application were denied and her mother remained in the United States.

The AAO notes that the record does not address the issue of relocation and its impact on the applicant's mother. Accordingly, the AAO is unable to find that the applicant's mother would suffer extreme hardship if she relocated outside the United States with the applicant.

In the final analysis, the AAO, having carefully considered the hardship factors, both individually and in the aggregate, finds the evidence of record insufficient to establish extreme hardship to the applicant's mother for purposes of relief under 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.