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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: ROME, ITALY

Date:

OCT 01 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), and Section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Iran 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 been convicted of a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his U.S. citizen father in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated May 14, 2007.

The record contains, *inter alia*: a letter from the applicant; letters from the applicant's father, [REDACTED]; letters from [REDACTED]; physicians; copies of [REDACTED] medical records; copies of conviction documents; a letter from the applicant's brother; a copy of the applicant's visa application; and a copy of an approved Petition for Alien Relative (Form I-130).

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:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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.

(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

In this case, the record shows that the applicant entered the United States in September 1979 as the dependent of a student, his father. The record further indicates, and the applicant admits, that in January 1981, the applicant was convicted of theft of \$499 and sentenced to fifteen days imprisonment, and in December 1986, he was convicted of contributing to the delinquency of a minor and sentenced to 90 days imprisonment. *Letter from* [REDACTED] undated (discussing the circumstances of his “convictions . . . in Fairfax county VA and Bethesda

Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude. *See Briseno-Flores v. Att’y Gen. of U.S.*, 492 F.3d 226, 228 (3d Cir. 2007) (guilty plea to petty theft was a crime involving moral turpitude) (citing *Quilodran-Brau v. Holland*, 232 F.2d 183, 184 (3d Cir. 1956) (“It is well settled as a matter of law that the crime of larceny is one involving moral turpitude regardless of the value of that which is stolen”), and *Matter of Scarpulla*, 15 I&N Dec. 139, 140-41 (BIA 1974) (“It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude”)).

Although the applicant is eligible for consideration of a waiver under section 212(h)(1)(A) of the Act because the activities for which render him inadmissible occurred more than 15 years ago, as explained below, the AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the

application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

The record shows that in December 2005, the applicant submitted a visa application to the American Embassy in Ankara, Turkey. The applicant answered “no” in response to the question, “[h]ave you ever been charged, arrested or convicted of any offense or crime?” *Application for Immigrant Visa and Alien Registration*, signed by the applicant December 28, 2005. In addition, the record shows that during the applicant’s consular interview, the applicant continued to deny he had ever been arrested or convicted of any crime. Although the applicant contends in his letter that the misrepresentation was a result of his father’s mistaken belief that the applicant had no arrest record, *Letter from [REDACTED] supra*, significantly, on the visa application, the applicant responded “no” to the question, “WERE YOU ASSISTED IN COMPLETING THIS APPLICATION?” Because the applicant stated he had not received any assistance in completing his visa application and the applicant erroneously indicated he had never been charged, arrested, or convicted of any crime, under these circumstances, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter the United States through willful misrepresentation of a material fact.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). 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 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. *See 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 alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: 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. The BIA has held:

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). In addition, the Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

The record contains several letters from the applicant’s father, ██████████ Mr. ██████████, who is currently seventy-seven years old, states he has diabetes, hypertension, arthritis, enlarged prostate, vision problems (70-80% blindness), weak bladder, weak liver, coronary artery disease, and kidney stones. He contends it is impossible to remove his kidney stones because his heart is too weak to undergo general anesthesia. ██████████ contends that he needs his son to come live with him in the United States as he is “getting weaker and weaker every day, losing energy in general, losing more visual acuity, physical ability, bone and muscle power and control.” ██████████ claims he needs his son to help him move around, do housework, drive him around, help with his medications and health care, do the shopping, and help with his daily routine. ██████████ further states that even though he has three other sons living in the United States, they are married with children, work full-time, commute more than an hour to work, and do not have time to assist him with his daily needs. He states he divorced the mother of his children in 1982 and that she passed away in 2006. ██████████ contends the applicant, who is currently forty-eight years old, unmarried, and living alone in Iran, is the only person in his family available to help him. *Letters from* ██████████ dated November 3, 2008, June 2, 2007, April 30, 2007, and March 21, 2006.

A letter from ██████████’s physician states that ██████████ is a type 2 diabetic who has to inject himself with 45 to 60 units of insulin to control his blood sugar. In addition, ██████████ physician states ██████████ suffers from high blood pressure, arthritis, heart problems, and prostate problems, each of which require daily medication. ██████████ physician also states ██████████ suffers from a loss of vision and uses eye drops daily, but the drops are not curative and only keep his eyes from infection and dirt. Moreover, according to ██████████ physician, ██████████ arthritis leaves him handicapped as he cannot walk for more than 200 yards at a time. ██████████ physician recommends that ██████████ have someone live with him as he is “a vulnerable patient and has vulnerable bones and muscle . . . [who] has been warned not to drive during [the] night[time], . . . during unfavorable weather conditions[,] . . . or during the daytime against [the] sunshine.” *Letter from* ██████████ dated February 20, 2006.

A letter from [REDACTED] cardiologist states that [REDACTED] has a weak heart and that four of his blood vessels are blocked due to heavy calcification. The cardiologist states that although surgery was scheduled for [REDACTED] to have his kidney stones removed, the cardiologist did not approve of using general anesthesia during the surgery because of [REDACTED] heart condition. The cardiologist explained that [REDACTED]'s blood vessels are "so tiny" that surgery to remove the calcification is not possible and, therefore, [REDACTED] "has no option [except] to live with the existing condition[s] and control his blood pressure, cholesterol, diabetes, kidney stones, enlarged prostate, weak bladder, etc." According to the cardiologist, "it is mandatory for [REDACTED] to have someone next to him in the same house day and night to help him." *Letter from [REDACTED] dated October 21, 2008.*

A letter from [REDACTED] doctor for prostate and kidney stones states that [REDACTED] was unable to have any surgical procedure done due to his bad heart condition. [REDACTED] doctor states [REDACTED] is at risk of a stroke, heart attack, or sudden death, and "recommend[s] that it is mandatory for [REDACTED] to have someone living with him in the same house 24 hours a day." *Letter from [REDACTED] dated September 24, 2008.*

A letter from the applicant's brother, [REDACTED] son, states that he is unable to help his father with his daily requirements. The applicant's brother states that he works at the Pentagon and is "extremely busy." *Letter from [REDACTED] dated June 2, 2007.*

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his father will experience extreme hardship if his waiver application is denied. It is evident from the record that the applicant's father has numerous serious health problems. [REDACTED] has diabetes for which he must give himself injections in order to control his blood sugar. He also has severe arthritis, which requires daily medication and which prevents him from walking more than 200 yards at a time. In addition, [REDACTED] has vision problems, preventing him from driving in the daytime if it is sunny out, at night, and in bad weather. Furthermore, he has blocked blood vessels and a weak heart. Moreover, [REDACTED] has kidney stones, which he must live with as **surgery is not possible due to his weak heart condition.** [REDACTED] also has high blood pressure and prostate problems, for which he takes daily medication. According to three of [REDACTED] doctors, [REDACTED] must have daily assistance and should not live alone. The record also indicates that the applicant is the only family member available to live with and assist [REDACTED] on a daily basis. Based on [REDACTED] serious health conditions and need for assistance, the AAO finds that the denial of the applicant's waiver application would result in extreme hardship to the applicant's U.S. citizen father.

Moreover, moving to Iran with the applicant to avoid separation would be an extreme hardship for [REDACTED]. Even assuming [REDACTED]'s physical health would permit him to move to Iran, relocating to Iran would disrupt the continuity of his health care and the procedures his doctors have in place to treat him. In addition, [REDACTED] has lived in the United States for forty years and would need to readjust to a life in Iran, a difficult situation made even more complicated by his

serious and chronic health problems. In sum, the hardship [REDACTED] would experience if his son were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case are the applicant's misrepresentation on his visa application and criminal history. The favorable and mitigating factors in the present case include: family ties in the United States, including the applicant's U.S. citizen father and three U.S. citizen brothers; the extreme hardship to the applicant's father if he were refused admission; and the fact that the applicant has not had any arrests or convictions for over twenty-three years.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.