

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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

H2

[Redacted]

FILE:

[Redacted]

Office:

[Redacted]

Date:

AUG 12 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[Handwritten signature]

[Redacted signature block]

Chief, Administrative Appeals Office

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

He 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 a . The applicant is the spouse of a U.S. citizen. 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.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 26, 2007.

On appeal, counsel for the applicant asserts that the director's decision was erroneous, that the decision constitutes an abuse of discretion, and that the record establishes the applicant's wife will experience extreme hardship.

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) 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 indicates that the applicant was convicted of theft with violence in on October 26, 2004 and he was sentenced to 15 months of imprisonment. In the United States, theft with violence is akin to "robbery." is typically defined as the felonious taking of property from the person in their presence by means of force or fear. Blacks Law

Dictionary, sixth edition, 1990.

See *Matter of Martin*, 18 I&N Dec. 226, 227 (BIA 1982) universally recognized as a crime involving moral turpitude.”). The record contains the judgment of the court, which cites from the statute and clearly states the applicant was convicted of taking property from the person of another with violence. As such, the applicant has been convicted of a CIMT and is inadmissible pursuant to § 212(a)(2)(A) of the Act. The applicant does not contest this finding.

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. 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 discuss 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.

With regard to the applicant’s form I-601, the record contains, but is not limited to: a statement from counsel for the applicant; statements from the applicant and his spouse; a statement from

█ regarding the applicant's spouse; a copy of the naturalization certificate for the applicant's spouse; and translated court records pertaining to the applicant's convictions.

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

With regard to the hardships impacting the applicant's spouse if she remained in the United States without the applicant, counsel has asserted that the applicant's spouse would suffer extreme psychological and emotional hardship, and refers to the statement from █, █, UCLA Neuropsychiatric Institute & Hospital.

█ states that he reviewed the applicant's spouse's medical history, and that she has diagnoses of █. He contends that her symptoms will be worsened upon either relocation or separation. The AAO would note that the record does not contain any documentation of the applicant's medical or psychiatric history. █ characterization of the applicant's spouse's condition is not corroborated by any other evidence in the record, such as medical documentation and history, psychiatric referrals or evidence that she is experiencing physical symptoms. Even the applicant's spouse failed to assert that she had any mental health condition, or was suffering from depression and anxiety in her four page statement. █ statement fails inform an analysis of the level of impact the applicant's spouse's is experiencing due to her condition, such as her ability to function on a daily basis. The statement also fails to render any prognosis for her condition, other than to state that the applicant's inadmissibility would not be beneficial to her mental health, or detail how the applicant's spouse is currently being treated and what could be done to alleviate her symptoms. Based on these reasons, this single statement from █ is not sufficiently probative to establish that the applicant's spouse would experience extreme emotional or psychological hardship if she remained in the United States without the applicant.

As discussed in █ *supra*, a determination of extreme hardship should include a consideration of the impacts of relocation with the applicant on the applicant's qualifying relative, although a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. █ makes a single statement in his letter asserting that he believes the applicant's mental health condition would be worsened if she relocated to France. The AAO would note that the applicant's spouse, who is █ is from France, and she states that she has only resided in the United States since 1996. █ statement fails to articulate how or why it would exacerbate the applicant's spouse's mental condition to return to her country of origin with the applicant. There is no indication that psychiatric treatment would be unavailable in France. █ the record contain any other evidence which is relevant to any hardship the applicant's spouse would experience upon relocation. The single, uncorroborated, unsupported statement by █ is not sufficient to establish that the applicant's spouse would experience any hardship rising above the norm upon relocation to France with the applicant.

The record, reviewed in its entirety and in light of the █ factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused

admission. The AAO recognizes that the applicant's spouse may experience some emotional hardship, and desires to have the applicant reside in the United States. These assertions, however, are common hardships associated with removal and separation, and do not 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, [REDACTED] (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 his U.S. citizen spouse 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 he merits a waiver as a matter of discretion.

The AAO notes that even if the applicant had satisfied the requirements of section 212(h)(1)(B) of the Act, he would be subject to the heightened discretionary standard for violent or dangerous crimes.

The regulation at 8 C.F.R. § 212.7(d) states in pertinent part:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section [REDACTED] violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

As discussed above, the applicant has failed to establish that a qualifying relative will experience extreme hardship if he is denied admission to the United States. As such, it is not necessary to reach an analysis of the applicant's discretionary waiver under the heightened standard of 8 C.F.R. § 212.7(d).

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.