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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: NEWARK, NJ

Date:

MAY 05 2010

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 Khew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru 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 committed a crime involving moral turpitude. The applicant's mother is 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).

The field office director concluded that the applicant had failed to establish eligibility for a section 212(h) waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 4, dated December 11, 2007.

On appeal, counsel asserts that the field office director incorrectly determined that the applicant was statutorily ineligible for relief and details the hardship to the applicant's mother. *Form I-290B*, at 2, received January 7, 2008.

The record includes, but is not limited to, the applicant's mother's statement and her medical records. The entire record was reviewed and considered in arriving at a decision on the appeal.

On April 18, 2005, the applicant was convicted of forgery in violation of New Jersey Statutes 2C:21-1a(2) and was sentenced to three years of probation. The crime of forgery is a crime involving moral turpitude. *See Matter of A--*, 5 I & N Dec. 52, 53 (BIA 1953). As such, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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) 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) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] 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; 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 [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 . . .

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this case, the applicant's mother. Hardship to the applicant is not a permissible consideration in a 212(h) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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 AAO notes that extreme hardship to the applicant's mother must be established whether she resides in Peru or in 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 first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Peru. The applicant's mother states that she suffered a stroke on March 15, 2007 and was hospitalized for six days, she has been under a constantly increasing regime of medications due to the complications of and as a result of her stroke, she is limited in her ability to work since her stroke and is afraid of having another episode, and she has to attend her doctor's visits. *Applicant's Mother's Statement*, undated. The record reflects that the applicant's mother was discharged from a hospital stay on March 20, 2007; she was instructed to follow up with the neurology clinic and the family health care clinic; and she has been prescribed aggrenox, lipitor,

zestoretic and inderal. *Applicant's Medical Records*, dated March 20, 2007. The record also establishes that on April 5, 2007, the applicant's mother was treated for abdominal pain in the emergency department of St. Joseph's Regional Medical Center. *Discharge Instructions*, dated April 5, 2007. While the AAO acknowledges that aggrenox is prescribed to patients who have suffered strokes, the record does not include supporting documentary evidence, such as a physician's letter, to establish the severity of the applicant's mother's stroke and how it has limited her in any aspect(s) of her life. Going on record without supporting documentation will not 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)). There is also no documentation of the continued treatment required by the applicant's mother or that such treatment would have to be provided in the United States. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's mother would suffer extreme hardship if she relocated to Peru.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that no one else could assist the applicant's mother financially or physically in her present condition, and she would become dependent on governmental means for supplying her needs. *Form I-290B*, at 2. The record indicates that the applicant's brother who as a joint financial sponsor filed a Form I-864, Affidavit of Support Under Section 213A of the Act, on the applicant's behalf resides at the same address as the applicant and their mother. There is no evidence in the record that he would be unable or unwilling to provide whatever care and support is required for his mother. The AAO notes that without documentary evidence to support the claims, 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).

The applicant's mother states that she suffered a stroke on March 15, 2007 and was hospitalized for six days, the applicant was her constant companion during her hospitalization, she has been under a constantly increasing regime of medications due to the complications of and as a result of her stroke, she is limited in her ability to work since her stroke and is afraid of having another episode, the applicant provides a substantial part of the funds that they need to live and makes sure she receives the required attention and care, he makes sure she attends all of her doctor's visits and monitors her condition, she could not operate at her reduced level without the applicant's care and attention, and she could not cope physically or mentally with her present condition without the applicant. *Applicant's Mother's Statement*. As previously noted, the record does not include supporting documentary evidence, such as a physician's letter, of the severity of the applicant's mother's stroke and how it has limited her in any aspect(s) of her life or of her emotional state. As mentioned, there is no evidence in the record that the applicant's brother would be unable or unwilling to provide whatever care and support is required for their mother. In addition, the record does not include supporting documentary evidence of the financial assistance that the applicant provides to his mother.

The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's mother would suffer extreme hardship if she remains in the United States.

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he applicant 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 proving eligibility 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.