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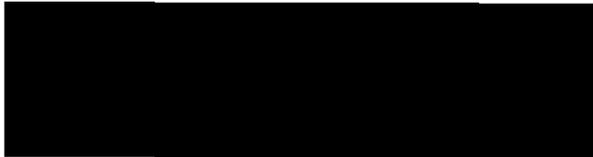


FILE: [REDACTED] Office: BANGKOK, THAILAND Date: SEP 15 2010

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:



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, 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 District Director, Bangkok, Thailand. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of South Korea who 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 Crimes Involving Moral Turpitude (CIMT). The applicant is the child of a U.S. citizen and a Lawful Permanent Resident (LPR). He 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 District 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 January 10, 2008.

On appeal, counsel for the applicant asserts that the District Director failed to consider the totality of the hardships that would be suffered by the applicant's parents if the applicant is excluded from the United States.

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 record indicates that the applicant has been convicted of the following crimes: Carrying a Concealed Weapon, Michigan Compiled Law (Mich. Compiled Law) § 750.227(2), on October 6, 1994, punishable by up to five years imprisonment; Domestic Violence, Mich. Compiled Law § 750.81(2), on July 13, 1995; Possession of a Financial Transaction Device (credit card), Mich. Compiled Law § 750.157p, on August 6, 1996; and Receiving Stolen Property, greater than \$200 but less than \$1,000, Mich. Compiled Law § 750.535(4)(a), on April 6, 1999.

Mich. Compiled Law § 750.157p states, in relevant part:

A person who has in his or her possession, or under his or her control, or who receives from another person a financial transaction device with the intent to use, deliver, circulate, or sell the financial transaction device, or to permit, cause, or procure the financial transaction device to be used, delivered, circulated, or sold, knowing the possession, control, receipt, use, delivery, circulation, or sale to be without the consent of the deviceholder, is guilty of a felony.

Unlawful possession of another's financial transaction device, or credit card, is a crime involving fraud and constitutes a CIMT. *See Balogun v. Ashcroft*, 270 F.3d 274, 278 (5th Cir. 2001)(holding that illegal possession of credit cards involved fraud, and constituted a CIMT); *see also Jordan v. DeGeorge*, 341 U.S. 223, 228(U.S. 1951)(holding that fraud has always been regarded by the courts, without exception, as within the scope of moral turpitude). As such, the applicant's conviction for illegal possession of a financial transaction device is a CIMT.

Mich. Compiled Law § 750.535 states in relevant part:

(1) A person shall not buy, receive, possess, conceal, or aid in the concealment of stolen, embezzled, or converted money, goods, or property knowing, or having reason to know or reason to believe, that the money, goods, or property is stolen, embezzled, or converted.

....

(4) If any of the following apply, a person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the property purchased, received, possessed, or concealed, whichever is greater, or both imprisonment and a fine:

(a) The property purchased, received, possessed, or concealed has a value of \$200.00 or more but less than \$1,000.00.

Mich. Compiled Law § 750.36 states in relevant part:

(1) A person who commits larceny by stealing any of the following property of another person is guilty of a crime as provided in this section:

(a) Money, goods, or chattels

In determining whether theft is a crime of moral turpitude, the Board of Immigration Appeals (BIA) considers "whether there was an intention to permanently deprive the owner of his property." *See In re Jurado-Delgado*, 24 I&N Dec. 29, 33 (BIA 2006). Under Michigan law, permanent deprivation is an element of the crime of larceny or theft. *See People v. Goodchild*, 68 Mich.App. 226, 232, 242 N.W.2d 465 (1976). Thus, the AAO finds the offense of which the applicant was convicted under Mich. Compiled Law § 750.535 to involve moral turpitude, as there was an intention to permanently deprive the owner of his property.

As the applicant has been convicted of two CIMTs, he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this finding.

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

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996)

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* 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 exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the BIA has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the BIA considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme

hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record includes, but is not limited to, the following relevant evidence: statements from counsel; letters from the applicant’s parents, his sister, and his aunt and uncle; a psychological evaluation of the applicant’s mother; letters from two pastors attesting to the applicant’s parents’ hardships; a statement from the accountant employed by the applicant’s parents; tax records for the applicant’s parents and their business; medical statements and records relating to the applicant’s parents’ and his sister’s health; and court records and printed sections of the Michigan Compiled Law pertaining to the applicant’s convictions. The entire record was reviewed and all relevant evidence considered in rendering this decision.

In the present case, the applicant’s parents assert that if they were to return to South Korea they would have to sell their business and that the real estate market is very bad. They claim that they have actually put their business up for sale but have received no offers. They also contend that the cost of living in South Korea is much higher than in Grand Rapids, Michigan and they cannot afford to live there. The applicant’s parents also assert that they would lose their Medicare and Social Security benefits if they returned to Korea. They further state that they have lived in the United States since 1980 and that it would be extremely challenging for them to move back to South Korea as there have been so many changes and so much development there.

The record establishes that the applicant’s parents own and operate a market, which they would have to lease or sell if they moved to Korea. The applicant’s parents claim that they have tried to sell their business but have received no offers as a result of the poor economy. The record, however, includes no documentary evidence of their efforts, e.g., advertisements or statements from

individuals involved in marketing the property. Neither does it contain any documentation to establish the state of the commercial real estate market in Grand Rapids, including statements from individuals familiar with Grand Rapids real estate. The record also demonstrates that the applicant's parents suffer from a number of health conditions, but the AAO notes that they have not claimed, nor does the record document, that they would be unable to obtain adequate health care in Korea. The record also fails to establish the cost of living in South Korea or that the applicant's parents would be unable to receive Social Security payments if they returned to Korea. The AAO notes that eligible U.S. citizens and lawful permanent residents who live in South Korea continue to receive Social Security benefits. We also observe that the record indicates that neither of the applicant's parents receive Medicare or Medicaid benefits.

The AAO acknowledges that the applicant's parents will have to leave behind the family market that they have operated for more than two decades and which is the source of their income. We further note that, at their ages, they will be unlikely to obtain employment in Korea upon their return. However, the record does not provide sufficient evidence to establish that these factors will result in significant economic hardship for them. As just noted, the record does not demonstrate that the applicant's parents, who state they have put their business up for sale, will be unlikely to obtain a buyer who will compensate them for their years of hard work. Further, no evidence has been submitted that establishes that the applicant, who left the United States for Korea in 2000, will be unable to assist his parents financially upon their return. Without documentary evidence of the hardships that would result from his parents' relocation, the AAO finds that the applicant has failed to establish that they would experience extreme hardship if they returned to South Korea.

Counsel for the applicant also contends that the applicant's parents will suffer financial, emotional and medical hardship if they continue to reside in the United State without him. He states that their health problems will force them to close their business, which is their only source of income, and that they will then have no assets and be unable to pay for any medical treatment. The applicant's mother and father assert that their health is declining and that they need their son in the United States to help run their business. They contend that their business will fail if the applicant is unable to return to the United States to assist them.

A letter from [REDACTED] CPA, dated October 9, 2007 indicates that he is the accountant for the applicant's parents' market and that they are finding it impossible to continue operating their business as a result of advancing age. [REDACTED] states that the applicant's two sisters are incapable of running the family market as business operations require an understanding of both Korean and English, as well as someone with sufficient strength to arrange inventory and facilitate delivery of inventory. He states that the applicant's parents are not physically capable of continuing to run the business on their own.

In an October 1, 2007 statement, one of the applicant's sisters indicates that her parents have gone through bankruptcy and, therefore, do not have enough savings on which to retire. She states that they need to keep their business running to have a source of income but cannot afford to hire outside help. She reports that her mother has been advised to have back surgery but cannot do so until the applicant is available to run the family's market. Her father, the applicant's sister states, cannot speak or write in English and is, therefore, unable to communicate with the market's English-speaking customers who make up half of its clientele. She also states that her father has health

conditions that prevent him from doing certain tasks to make the business run efficiently. She states that she is also unable to assist her parents as she suffers from hypothyroidism and has a history of depression and anxiety. She further notes that her spoken Korean is limited and that she is unable to write in Korean. She states that the applicant's other sister is also unable to write or speak Korean and lives in Las Vegas.

The record contains an October 1, 2007 medical statement from [REDACTED] who indicates that he has been treating the applicant's father for Type II diabetes, hypertension and migraine headaches for some time. A September 17, 2007 medical statement from [REDACTED] reports that the applicant's mother has a history of diverticulitis and partial colon resection and has been doing well following her surgery. [REDACTED] also indicates that she suffers from lower back pain and radiation of pain to the lower extremities, cannot lift more than ten pounds and cannot perform the twisting, squatting and bending required by her business. Included in the record are the results of an MRI of the applicant's mother's spine that confirm this diagnosis. [REDACTED] states that the applicant's mother has been encouraged to consider surgery. The record also contains a second October 1, 2007 statement from [REDACTED] who indicates that he has been treating the applicant's sister for hypothyroidism and anxiety.

While the AAO acknowledges the health conditions of the applicant's parents and that the applicant's mother has limited physical mobility and lower back problems, it does not find the record to establish that the applicant's parents will be unable to operate their business in the applicant's absence. Based on the record, it appears that the assistance required by the applicant's parents is limited to arranging the market's inventory and facilitating the delivery of inventory. Although the applicant's sister states that her parents cannot afford to hire any help because they went bankrupt, the record does not establish that they do not have the funds to hire someone to assist with the shelving and offloading of inventory. The applicant's parents' accountant, while he confirms that they recently underwent bankruptcy, does not report on their current financial situation or indicate that it prevents them from hiring someone to take over the physical tasks that can no longer be performed by the applicant's mother. The record also fails to demonstrate that the applicant's sister would be unable to help her mother with the tasks she can no longer perform. While [REDACTED] October 1, 2007 statement establishes that the applicant's sister suffers from hypothyroidism and anxiety, no evidence has been submitted to establish that either of these conditions limit her daily activities or that they would prevent her from physically assisting her mother.

The applicant's parents also assert that they are suffering emotional hardship as a result of their separation from the applicant. The record contains statements from friends and family regarding their sadness in the absence of their only son. Further, in an October 15, 2007 evaluation of the applicant's mother, [REDACTED], a licensed Medical Social Worker, finds that the deterioration of the applicant's parents' health, plus the emotional difficulties created by their separation from the applicant, have placed them in a difficult downward economic spiral and emotional situation. She also states that the separation has been a psychological drain and has caused emotional and health distress to the applicant's mother and father. [REDACTED] concludes that the requirements for the applicant's waiver have been met.

Although the input of any mental health professional is respected and valuable, the AAO notes that [REDACTED] determination that the applicant's mother would experience extreme hardship is a legal

finding reserved for the AAO. We further observe that the evaluation prepared by [REDACTED] offers no diagnosis of the applicant's mother's mental/emotional state as a result of the applicant's inadmissibility. Although she states that the applicant's mother is experiencing emotional distress, this general conclusion is not sufficiently probative to establish how the applicant's mother has been affected by the applicant's inadmissibility. Accordingly, the submitted evaluation is of limited evidentiary value to a determination of extreme hardship.

Based on the evidence that has been submitted for the record, the AAO concludes that the claimed hardship factors, even when considered in the aggregate, do not demonstrate that the applicant's parents will experience extreme hardship if the applicant is denied admission and they remain in the United States.

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, *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. In that the record does not distinguish the hardship that would be suffered by the applicant's parents from the hardship normally experienced by others whose family members have been excluded from the United States, the applicant has failed to establish extreme hardship to his parents 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 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.