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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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DATE **APR 13 2011** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Applicant:

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:

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 \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia 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 two children are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The director concluded that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, at 3, dated August 15, 2008. The applicant filed a motion to reopen and the director affirmed the denial. *Second Decision of the Director*, at 2, dated December 4, 2008.

On appeal, counsel states that the director's decision was arbitrary, capricious and an abuse of discretion. *Form I-290B*, at 2, received December 30, 2008.

The record includes, but is not limited to, counsel's brief, statements from the applicant's children, medical documentation for the applicant, and country conditions information on Colombia. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted on January 11, 2007 under New Jersey Statutes 2C:20-4 of theft by deception in the third degree. He received 90 days of in-house detention and one year of probation, and he was ordered to pay \$1,500 in restitution.¹ The statute states:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment of a transaction; or
- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

¹ The applicant is not eligible for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act as the maximum penalty for a third degree conviction in New Jersey is 5 years. See *New Jersey Statutes 2C:43-6(a)(3)*.

The term “deceive” does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

The AAO finds that this is a crime involving moral turpitude as it involves deception. *See generally Matter of McNaughton*, 16 I&N Dec. 569 (BIA 1978). As such, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude.

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), (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 son and daughter are the only 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-Morales*, 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 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 Board 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 Board 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 Board 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 Board 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 Board 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 first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of the qualifying relative's relocation to Colombia. The record reflects that the applicant's daughter is 35 years old and his son is 31 years old. The applicant's daughter states that the applicant has no relatives in Colombia. *Applicant's Daughter's Statement*, at 1, dated July 31, 2008. Counsel states that the conditions in Colombia are dangerous and the applicant's children would fear for the applicant's life. *Brief in Support of Appeal*, at 2, undated. The applicant's daughter states that the applicant was held by guerillas for two and one-half months in 1990, his employer paid his ransom, and he was in constant fear for his life and his family's safety; she fears for his life due to kidnappings and ransom demands; and she does not know how she would cope knowing that he is in danger. *Applicant's Daughter's Statement*, at 1. The record includes information from the U.S. Department of State on conditions in Colombia, dated August 13, 2008, which details the general security and criminal issues in Colombia. However, the record does not include supporting documentary evidence that the applicant was previously kidnapped in Colombia or that he would specifically be in danger. 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)).

Counsel states that the applicant's children would experience extreme hardship upon the applicant suffering a medical emergency; the applicant's medical conditions will certainly worsen in Colombia without access to proper medical treatment; the applicant would be unable to work; and his children would have to provide financial support. *Brief in Support of Appeal*, at 3. The record reflects that the applicant has severe degenerative disease of his spine, particularly in the cervical and lumbar areas; he has marked osteoarthritis in his knees; he receives steroid anti-inflammatory injections; and he would be unable to function in a work capacity without his therapeutic interventions. *Letter from [REDACTED]* dated September 8, 2008. The record reflects that the applicant has emphysema, chronic bronchitis, and hyperlipidemia. *Medical Records*, at 2, dated September 4, 2008. The applicant was previously admitted to a hospital with chest pain and was assessed to have acute coronary syndrome. *History and Physical*, at 1-2, dated April 27, 2006. The aforementioned country report states that medical care is adequate, emergency rooms are overcrowded, and many private health care providers require payment before treatment. The record does not include sufficient evidence to reflect that the applicant could not receive medical treatment in Colombia. In addition, other than the applicant's daughter's statement, the record does not include evidence of financial or emotional hardship to the applicant's children upon relocation to Colombia.

While the record supports that the applicant's son and daughter would have concern for him should he reside in Colombia, the applicant has not presented clear assertions regarding the experience his

children would have should they join him. The record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that a qualifying relative would experience extreme hardship upon relocating to Colombia.

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. As mentioned above, counsel states that the conditions in Colombia are dangerous and the applicant's children would fear for the applicant's life. *Brief in Support of Appeal*, at 2. The applicant's daughter states that she has a very close relationship with the applicant; her family has never been apart; the applicant was held by guerillas for two and one-half months in 1990, his employer paid his ransom, and he was in constant fear for his life and his family's safety; she fears for his life due to kidnappings and ransom demands; and she does not know how she would cope knowing that he is danger. *Applicant's Daughter's Statement*, at 1. The record does not include supporting documentary evidence that the applicant was previously kidnapped in Colombia or that he would specifically be in danger. The applicant's daughter details her closeness to the applicant in her July 31, 2008 statement. The applicant's son states that the applicant is the backbone of his new family; he is divorced; the applicant helps him take care of his baby and is raising her with good morals; and he is afraid that his daughter's life will be further damaged. *Applicant's Son's Statement*, undated.

Counsel states that the applicant's children would experience extreme hardship upon the applicant suffering a medical emergency; the applicant's medical conditions will certainly worsen in Colombia without access to proper medical treatment; the applicant would be unable to work and his children would have to provide financial support; the applicant's children would worry for his safety; and family separation would cause pain and suffering. *Brief in Support of Appeal*, at 3. The applicant's medical issues have been discussed in the first prong of the analysis. The record does not include sufficient evidence to reflect that the applicant could not receive medical treatment in Colombia. With respect to the applicant's safety in Colombia, the Department of State report included in the record states that the level of violence has decreased markedly in many areas of Colombia. Further, as noted, there is no evidence in the record indicating that the applicant specifically would be in danger in Colombia. With respect to the applicant's inability to work in Colombia, there is no evidence the applicant would be unable to find employment in Colombia. Nor is there evidence that the applicant's children would suffer hardship if they provide financial support to the applicant. The record contains a Form G-325A, Biographic Information, signed by the applicant on August 16, 2007. The applicant stated on the Form G-325A that he had been unemployed since December 2006, thus it does not appear that lack of employment would create a hardship for the applicant's children. Other than the applicant's children's statements, the record does not include evidence of financial or emotional hardship to the applicant's children upon remaining in the United States.

The record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

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 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.