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U. S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[Redacted]

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FILE: [Redacted] Office: ATLANTA Date: APR 18 2011

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. § 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.

Thank you,

*Michael Humway*

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Colombia who was found to be inadmissible under 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. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse.

The director determined that the applicant 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 Field Office Director*, dated August 21, 2008.

On appeal, counsel asserts that the applicant's spouse and stepson are suffering extreme hardship as a result of the applicant's inadmissibility. *Notice of Appeal or Motion (Form I-290B)*, dated September 18, 2008.

In support of the waiver application, the record includes, but is not limited to, the applicant's conviction records, school records, a letter from the applicant's spouse's grandmother, a letter from the applicant's employer, financial records, a letter from the applicant's spouse, the applicant's spouse's naturalization certificate, medical documentation, and a copy of a lawsuit filed by the applicant in Colombia. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that on October 23, 2006 the applicant was convicted in the Superior Court of Hall County, Northeastern Judicial Circuit, Georgia, of forgery in the first degree in violation of section 16-9-1 of the Code of Georgia. The applicant was sentenced to a term of 364 days imprisonment, which he was allowed to serve on probation (Case No. 06 CR 642J).

At the time of the applicant's conviction, Ga. Code Ann. § 16-9-1 provided:

(a) A person commits the offense of forgery in the first degree when with intent to defraud he knowingly makes, alters, or possesses any writing in a fictitious name or in such manner that the writing as made or altered purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority and utters or delivers such writing.

(b) A person convicted of the offense of forgery in the first degree shall be punished by imprisonment for not less than one nor more than ten years.

Section 16-9-1 of the Code of Georgia is violated when the offender has the "intent to defraud" by uttering or delivering a fictitious writing. Fraud has, as a general rule, been held to involve moral turpitude. In *Matter of Seda*, the BIA determined that a conviction for forgery in the first degree in violation of the Code of Georgia is a crime involving moral turpitude. 17 I. & N. Dec. 550, 552 (BIA 1980). The U.S. Supreme Court in *Jordan v. De George* concluded that "Whatever else the

phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct." 341 U.S. 223, 232 (1951). Therefore, the applicant's offense is categorically a crime involving moral turpitude, and he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

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 U.S. citizen spouse is 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-Moralez*, 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. ██████ 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 reflects that the applicant wed his spouse, ██████ on December 29, 2005. According to the record, the applicant’s spouse had a son, ██████ prior to their marriage. The record contains evidence of ██████ involvement in school sports, and his class schedule at Georgia Perimeter College. However, the applicant has not submitted ██████

birth certificate to establish whether he would be considered the applicant's stepchild within the definition of section 101(b)(1)(B) of the Act, 8 U.S.C. § 1101(b)(1)(B). Accordingly, the AAO will only consider hardship to insofar as it results in hardship to the applicant's spouse.

On appeal, counsel asserts that the applicant demonstrated extreme hardship to his spouse, son and his spouse's mother. Counsel states that without the applicant's spouse's presence in the United States, "her mother would not be able to obtain treatment and her life would be in peril." Counsel states that the applicant's son "is a very accomplished athlete and depends 100% on Respondent's financial support." Counsel states that relocating to Colombia would be impossible for the applicant's spouse because "she could not leave behind an ailing mother and a son who may very well become a major soccer athlete." *Notice of Appeal (Form I-290B)*, dated September 18, 2008.

The applicant's spouse asserts that she has all of her family in the United States, including her mother, brothers, aunts, and her grandmother. She states that "there is nobody left in Colombia" and she and her son have made a life in the United States. She contends that going back to Colombia is not a possibility for them because the applicant was "threatened to death several times by the Paramilitaries," and she does not think that it will be safe for them. She notes that her son has grown up in the United States and has opportunities in this country that he would not have in Colombia. *Letter from Idialismer Cortez*, dated October 1, 2007.

The letter contains a letter from the applicant's spouse's grandmother, which states that she is close with the applicant's spouse. Ms. states that she has dialysis three times a week due to her kidney condition, and the applicant's spouse is the only person who accompanies her. She contends that if the applicant's spouse leaves, she will be alone. Ms. notes that the applicant is "a good man, and he has worked so hard." *Letter of* dated September 4, 2008.

Upon review of the documentation in the record, the AAO finds that the applicant's spouse will suffer extreme hardship if she had to relocate to her native country of Colombia to maintain family unity.

The record reflects that the applicant's spouse has numerous family ties in the United States. She has shown that she is involved with her grandmother's medical care. The record contains a letter from which states that the applicant's spouse's grandmother has Chronic Kidney Disease and is on dialysis, which requires continuous treatment. states that the applicant's spouse is responsible for transporting her grandmother to her appointments. *Letter from* dated August 31, 2007. The record reflects that the applicant's spouse has raised her son as a single mother and he continues to reside with her. *See Georgia Perimeter College Student Schedule (Fall 2008)* and *Letter from* dated October 1, 2007. Furthermore, the record shows that the applicant's spouse has held long-term employment with Peachtree Doors and Windows since July 1999. *See Letter from* dated May 25, 2006. The AAO finds

that the applicant's spouse's ties to the United States are significant, and will give considerable weight to the hardship she would suffer if she had to sever these ties to relocate to Colombia.

The applicant's spouse has expressed concern for her safety in Colombia. The U.S. Department of State's travel warning for Colombia advises that "While security in Colombia has improved significantly in recent years, violence by narco-terrorist groups continues to affect some rural areas as well as large cities. The potential for violence by terrorists and other criminal elements continues to exist in all parts of the country." The travel warning further provides, "In recent months there has been a marked increase in violent crime in Colombia. Murder rates have risen significantly in some major cities, particularly [REDACTED]. Kidnapping remains a serious threat. U.S. citizens have been the victims of violent crime, including kidnapping and murder." *U.S. Department of State, Travel Warning, Colombia*, dated November 10, 2010. The AAO finds that the applicant's spouse's concerns for her safety and security in Colombia are realistic, and will be given significant weight in an overall consideration of extreme hardship.

All elements of hardship to the applicant's spouse, should she relocate to Colombia, have been considered in the aggregate. The AAO finds that the hardships the applicant's spouse would suffer from the severance of family and community ties and relocation to a country that has a high rate of violent crime, rise to the level of extreme hardship. Therefore, the applicant has established that his spouse would suffer extreme hardship if she relocated with him to Colombia.

The AAO also finds that the applicant has demonstrated that his spouse would suffer extreme hardship if she remained in the United States separated from him.

The applicant's spouse asserts that she and the applicant "have a happy and relaxed life." She states that they work and share expenses, and the applicant helps with her son's expenses. She states that the applicant is a "perfect husband" and an "excellent father." She states that she cannot imagine her life without the applicant. *Letter from [REDACTED]* dated October 1, 2007.

The AAO notes that the claims of financial hardship the applicant's spouse would suffer are not demonstrated by the record. The record contains a letter from the applicant's spouse's employer reflecting that she is employed full-time at a rate of \$13.40 per hour. If the applicant's spouse is employed forty hours a week, she is earning \$27,872 annually. There is no documentation in the record to reflect that her salary is insufficient to pay her expenses. The applicant's spouse has not indicated whether her adult son, who is a college student, could partake in part-time employment to assist with his college expenses. Furthermore, the record does not contain earnings statements, Wage and Tax Statements (Form W-2), or tax returns to reflect the applicant's earnings. The letter in the record from the applicant's employer states that he is employed in a "seasonal operation," but does not indicate his earnings during his period of employment. *See Letter from [REDACTED]*, dated September 9, 2008. Without evidence of the applicant's earnings, the AAO is not in a position to assess the impact the loss of his income would have on his spouse.

The applicant's spouse has expressed that the applicant was "threatened to death several times by the Paramilitaries." The applicant included in the record a document translated into English as a "criminal lawsuit." The document indicates that the applicant filed a "criminal lawsuit against unknown individuals for the crime of Death Threats." See *Criminal Lawsuit Translation*, dated February 24, 2000. The document indicates that the applicant was targeted in Colombia with death threats. Although the AAO is not in a position to assess the credibility of the claims made in the lawsuit, the AAO acknowledges that the U.S. Department of State's travel warning for Colombia advises that violence is prevalent throughout the country. See *U.S. Department of State, Travel Warning, Colombia*, dated November 10, 2010. The AAO will consider the hardships the applicant would suffer upon his relocation to Colombia to the extent that those hardships would impact his spouse, including her desire and ability to visit the applicant.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she is separated from the applicant as a result of his inadmissibility. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[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." (Citations omitted). The AAO finds that the applicant's separation from his spouse will constitute emotional suffering, and is sympathetic to their situation. The AAO finds that the hardship presented in this case are beyond the ordinary hardship suffered by individuals who are separated as a result of inadmissibility because of the concern the applicant's spouse would have for the applicant during his residence in Colombia.

All presented elements of hardship to the applicant's spouse, should she remain in the United States, have been considered in aggregate. Based on the foregoing evidence of emotional hardship the applicant's spouse would suffer upon separation as well as her concern about the applicant's safety and well-being in Colombia, the applicant has established that his spouse would suffer extreme hardship if she was separated from him.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's conviction for forgery in the first degree, a crime involving moral turpitude. The favorable factors in the present case are the extreme hardship to the applicant's U.S. citizen spouse, the passage of four years since his conviction, the lack of any other criminal convictions, and that he has not been convicted of a violent or dangerous crime.

The AAO finds that the applicant's criminal conviction is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.