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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

H2



Date: AUG 05 2011

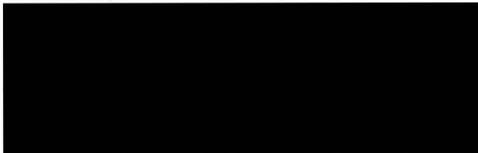
Office: CHICAGO, IL

FILE: [REDACTED]

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(l)

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.

Thank you,

*Michael Shumway*

f Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico 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 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 with his lawful permanent resident parents and his U.S. citizen wife and children.

In a decision, dated September 10, 2007, the field office director found the applicant inadmissible for having been convicted of forgery in Iowa in 1998. The field office director also found that the applicant had failed to establish that his qualifying relative would suffer extreme hardship or that he warranted the favorable exercise of discretion. The waiver application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated October 3, 2007, counsel states that the field office director arbitrarily dismissed the affidavits of the applicant's family members. She states that the applicant's parents, wife, two children, and other relatives are lawful permanent residents or U.S. citizens and that the applicant has been living in the United States since he was fifteen years old. Counsel states that the only negative factor in the applicant's case is his single arrest and conviction. Counsel states that the applicant never used the fraudulent document for employment or immigration benefits.

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.)

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24

I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record indicates that on January 20, 1998, the applicant was arrested and charged with possession of a forged U.S. document under Iowa Code section 715A.2(4). On May 21, 1998, the applicant pled guilty to this charge, was granted a deferred judgment, and was sentenced to one year probation. The applicant, born on June 10, 1979, was 18 years old at the time he was arrested.

At the time of the applicant’s conviction, Iowa Code section 715A.2(4) stated:

1. A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:

a. Alters a writing of another without the other's permission.

b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.

c. Utters a writing which the person knows to be forged in a manner specified in paragraph “a” or “b”.

d. Possesses a writing which the person knows to be forged in a manner specified in paragraph “a” or “b”.

2. a. Forgery is a class “D” felony if the writing is or purports to be any of the following:

...

(4) A document prescribed by statute, rule, or regulation for entry into or as evidence of authorized stay or employment in the United States.

The AAO notes that in *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), the BIA held that “possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude.” 20 I&N Dec. 579, 586 (BIA 1992). Furthermore, in *Omagah v. Ashcroft*, 288 F.3d 254, 262 (5<sup>th</sup> Cir. 2002), the Fifth Circuit Court of Appeals found that possession of illegal documents with an intent to use them to defraud the government was a crime of moral turpitude. 228 F.3d at 261. The AAO finds that as Iowa Code section 715A.2(4) requires the specific intent to defraud or injure, an unlawful use, the statute “is accompanied by a vicious motive or corrupt mind” and is thus a crime involving moral

turpitude. *See, e.g.*, 288 F.3d at 262 (finding that crimes that do not involve fraud, but that include “dishonesty or lying as an essential element” also tend to involve moral turpitude); *see also Itani v. Ashcroft*, 298 F.3d 1213, 1216 (11th Cir. 2002) (“Generally a crime involving dishonesty or false statement is considered to be one involving moral turpitude.”).

In addition, the applicant’s conviction does not qualify for the petty offense exception to inadmissibility because the maximum sentence for a Class D felony in Iowa is five years imprisonment. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(I), for having committed a crime involving moral turpitude.

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, spouse, and two children 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-Morales*, 21 I&N Dec. 296, 301 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In support of the waiver application, the record contains: an affidavit from the applicant's spouse, 2006 federal income tax returns for the applicant and his spouse, employment information for the applicant and his spouse, medical documentation, financial documentation, and reports on the effects of separation and loss on childhood development. The entire record has been reviewed in rendering a decision on the appeal.

In her affidavit, dated September 27, 2007, the applicant's spouse states that she and her two children would suffer extreme hardship if the applicant is found inadmissible. She states that a few years ago she was diagnosed with Keratoconus, a degenerative non-inflammatory disorder of the

eye. She states that although currently under control, the progression of the disease is unpredictable and could eventually affect her ability to drive, read, and/or work. She states that the disease is affecting both of her eyes and in some cases patients require a cornea transplant. The applicant's spouse states that currently she has access to a wonderful health insurance plan through the applicant's employer and that if the applicant were removed this access would be terminated. She states that in Mexico she fears she would not be able to receive the treatment she needs and her condition would be negatively impacted. She also states that she would not be able to afford health insurance through her employer, which would add up to approximately \$5,700 per year.

The applicant's spouse also states that she and her children will suffer severe and extreme financial hardship as a result of the applicant's inadmissibility. She states that it would be impossible for her to pay her bills without the applicant and she fears that she would have to move to a lower income neighborhood where there is gang violence. She also states that she and the applicant purchased a lot of land to construct a home and if the applicant is removed they will not be able to finish construction on the house. She states that because the applicant wanted to be in charge of the construction project they were not able to receive a construction loan and financed the construction of their home, over \$100,000, with their credit cards. She states that their plan is that after the home is constructed they will apply for a home equity loan to pay off the credit cards. She states that if the applicant were removed from the United States, construction on the home would stop and she would not be able to pay off her credit card debt without the applicant. The applicant's spouse also expresses concerns over being able to provide for her children in the absence of the applicant. She states that the applicant has been a union laborer for over ten years and through this employment the family receives medical, dental, and vision insurance as well as the applicant receiving a pension plan.

In addition, to medical and financial hardship the applicant's spouse also expresses concern over the emotional hardship of separation and the current country conditions in Mexico. She states that the U.S. State Department has issued a travel warning for Mexico City and that it would not be a very safe place for her and her children. She also states that she will not be able to afford plane tickets for her and the children to visit the applicant in Mexico and that the only family members she has living in Mexico are her grandparents. She states that she also worries about her children being separated from the applicant and what the separation will do to their psychological health. The AAO notes that the applicant's children are under the age of 12.

The AAO finds that as the record supports the hardship claims made by the applicant's spouse, the applicant has established that his spouse and children will suffer extreme hardship as a result of his inadmissibility. The record indicates that in 2006 the applicant and his spouse earned a combined income of \$94,743 with the applicant earning approximately 70% of this income. The record includes letters from the applicant's union confirming the benefits and pension he is entitled to through his work. Also submitted as part of the record is a letter from the applicant's spouse's employer showing that if she enrolled in their health insurance program she would have to pay anywhere from \$174 to \$219 per pay period for her benefits. The record also contains a letter from the applicant's spouse's doctor and medical documentation establishing her diagnosis and treatment for her eye disorder.

The AAO notes that the record also establishes that the applicant and his spouse have a total of \$107,000 in credit card debt with balances on thirteen different credit cards. They also have submitted documentation showing that they own property, are building a new home on this property, and own three vehicles.

The AAO finds that the applicant's spouse will suffer emotional, financial, and medical hardship with the applicant's children also suffering emotionally and financially as a result of his inadmissibility. The applicant's spouse and children will suffer extreme hardship as a result of separation or as a result of relocating to Mexico. When taking the hardship factors in the aggregate, the AAO must find that the applicant's spouse and children would suffer extreme hardship as a result of his inadmissibility. The AAO therefore finds that the applicant has established that his wife and children would suffer extreme hardship if his waiver of inadmissibility is denied.

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).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). 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 1998 conviction for forgery.

The favorable factors in the present case are the extreme hardship to the applicant's spouse and children; the applicant's extensive family ties to the United States including parents and siblings; the fact that the applicant was only 18 years old when he committed the offense that led to his

conviction; the applicant's lack of a criminal record or offense since 1998; the applicant's record of employment and his attributes as a supportive and loving father and husband.

The AAO finds that the crime committed by the applicant 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 factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.