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U. S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: MIAMI

Date:

MAR 09 2011

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h), (i).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility was denied by the District Director, Miami, Florida, 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 under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact to procure admission into the United States. The applicant is applying for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse, and lawful permanent resident mother and daughter.

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 District Director*, dated September 15, 2008.

On appeal, the applicant's husband asserts that the applicant's nonimmigrant visa application was prepared by a travel agency in Colombia, and she did not have knowledge about the questions asked on the application. He states that he loves his wife and needs her in the United States with him and their daughter. *Statement from* [REDACTED]

In support of the waiver application, the record includes, but is not limited to, court dispositions, letters from the applicant and her spouse, and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts the final administrative review and enters the ultimate decision for U.S. Citizenship and Immigration Services on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. See *Helvering v. Gowran*, 302 U.S. 238, 245-246 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003).

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.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

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

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

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 August 20, 1990, the applicant was convicted in the Supreme Court of the County of Suffolk, State of New York, of criminal possession on stolen property in the fourth degree, in violation of New York Penal Law § 165.45, and criminal possession of stolen property in the fifth degree, in violation of New York Penal Law § 165.40 (Case Numbers 89-644733 & 89-644735).

For an individual to be convicted of either fourth or fifth degree criminal possession of stolen property under New York Penal Law §§ 165.45 and 165.40, a defendant must “knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof. . . .” Both crimes are types of theft, a type of offense that has long been recognized as involving moral turpitude. In *Michel v. INS*, 206 F.3d 253, 263-64 (2d Cir.

2000), the Second Circuit Court of Appeals affirmed the Board of Immigration Appeal's determination that fifth-degree criminal possession of stolen property in violation of New York Penal Law § 165.40 is categorically a crime involving moral turpitude. The Court concluded that "all violations of New York Penal Law § 165.40 are, by their nature, morally turpitudinous because knowledge is a requisite element of section 165.40 and corrupt scienter is the touchstone of moral turpitude." Accordingly, the AAO finds that the applicant's convictions are crimes involving moral turpitude. The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act on this basis.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reveals that on January 6, 1999, the applicant filed a Nonimmigrant Visa Application (OF-156), with the U.S. consulate at Bogota, Colombia. At question #34 of the application, where applicants are asked if they have ever been arrested or convicted of any offense or crime, the applicant responded "No." The applicant was granted a B1/B2 nonimmigrant visa on January 12, 1999, and she was admitted to the United States as a B2 visitor on June 7, 1999. The AAO finds that the applicant's misrepresentation shut off a line of inquiry relevant to her eligibility which, if known, could have resulted in a proper determination that she be denied a visa and admission to the United States. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1960).

On appeal, the applicant's husband asserts that the applicant's nonimmigrant visa application was prepared by a travel agency in Colombia, and she did not have knowledge about the questions asked on the application. The AAO finds the applicant's husband's assertion to be unpersuasive. The Foreign Affairs Manual, provides, "[t]he fact that an alien pursues a visa application through an attorney or travel agent does not serve to insulate the alien from liability for misrepresentations made by such agents, if it is established that the alien was aware of the action being taken in furtherance of the application. This standard would apply, for example, where a travel agent executed a visa application on an alien's behalf." 9 FAM 40.63 N4.5. In the instant case, the record shows that the applicant signed her nonimmigrant visa application, indicating that she was aware of the contents of

her application. Moreover, the section of the application requesting the signature of the individual who prepared the application is blank, casting doubt upon the applicant's spouse's assertion that his spouse relied on a travel agency to complete her application. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant is eligible for section 212(h) and 212(i) waivers of inadmissibility. The AAO will first assess the applicant's eligibility for a waiver under the more restrictive standard of section 212(i) of the Act. A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is relevant to section 212(i) waiver proceedings only to the extent it results in hardship to a qualifying relative, in this case the applicant's husband and mother. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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 record shows that the applicant wed [REDACTED], a U.S. citizen, on March 1, 2006. The applicant listed her spouse and her mother, [REDACTED], a lawful permanent resident, as qualifying relatives on her waiver application. The applicant had one child prior to her marriage, Isabela Moreno, who is now a lawful permanent resident.

The applicant filed with her waiver application a letter dated August 20, 2008 explaining her criminal convictions and entries into the United States. In denying the application, the director observed that, “In support of the I-601, you submitted a letter explaining the events of your arrests and your entries to the United States. No further documentation was submitted to demonstrate extreme hardship to your spouse.” *Decision of the District Director* at 3.

On appeal, the applicant’s spouse submits a letter stating that he loves his wife and needs her in the United States with him and their permanent resident daughter. He notes that their daughter is enrolled in the gifted program at her elementary school.

The AAO acknowledges that the applicant and her spouse will experience emotional hardship if they are separated as a result of her 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 her spouse will constitute emotional suffering, but the applicant has failed to demonstrate that this hardship alone rises to the level of extreme hardship. The applicant’s spouse has not described the emotional and psychological hardships he would suffer upon separation from the applicant. Nor has he stated whether there will be any financial hardships if he remains in the United States. The AAO notes that hardship to the applicant’s daughter will be considered insofar as it results in hardship to the applicant’s spouse. The applicant has not stated whether her 12-year-old daughter, who is a native of Colombia, will return with her to Colombia if her waiver application is denied. The AAO notes further that the applicant’s lawful permanent resident mother has not submitted a statement detailing the hardships she would suffer upon separation from the applicant. While almost every case will present some hardship, the fact pattern here is not beyond the ordinary hardship suffered by individuals who are separated as a result of inadmissibility.

Furthermore, the applicant has not asserted, or submitted evidence to demonstrate, that her U.S. citizen spouse or lawful permanent resident mother would suffer extreme hardship in Colombia if they relocated there to maintain family unity. The AAO notes that the applicant’s mother is a native of Colombia and therefore should have less difficulty adjusting to the language, customs and culture of Colombia. Accordingly, the AAO cannot determine that the applicant’s qualifying family members would suffer extreme hardship if they relocated to Colombia.

In this case, the record does not contain sufficient evidence to show that the applicant’s spouse and mother would suffer extreme hardship if she is denied admission to the United States. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval 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.