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



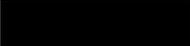
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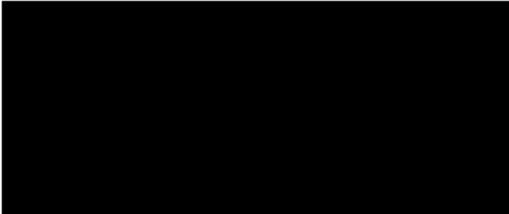
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h)
and 212(i) of the Immigration and Nationality Act

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 Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant is a native and citizen of the United Kingdom 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 crimes involving moral turpitude. The director indicated that the applicant sought 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 that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

Counsel asserted that the applicant has separated from her U.S. citizen husband. However, counsel avers that the applicant has a close relationship with her three U.S. citizen sons, who are 26, 11, and 7 years old. Counsel declared that the applicant's sons, particularly her two youngest sons, would experience extreme hardship if the applicant were denied admission to the United States. Counsel further declared that the applicant's conviction in 2000 for making a false written statement to the Department of Motor Vehicles is not a crime involving moral turpitude. Lastly, counsel maintained that the applicant qualifies for a waiver under section 212(h)(1)(A) of the Act. *Appeal Brief*, dated September 22, 2008.

The AAO determined that the applicant was inadmissible to the United States because at least two of her convictions were for crimes involving moral turpitude. *Notice of Intent to Dismiss*, dated June 16, 2011. In addition, the AAO found the applicant was inadmissible pursuant to section 212(a)(6)(C) of the Act for seeking admission into the United States on August 8, 1996 by willful misrepresentation of a material fact. *Id.* Lastly, the AAO concluded that the applicant failed to establish eligibility for a waiver under section 212(i) of the Act. *Id.*

Counsel does not dispute that the applicant is inadmissible for having committed crimes involving moral turpitude (with the exception of her 2000 conviction for false statement). However, counsel disputes inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C)(i) 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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961), as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

Counsel states that the applicant is not inadmissible under section 212(a)(6)(C) of the Act. Counsel contends that since 1981 the applicant entered the United States on multiple occasions using valid U.S. nonimmigrant visitor and student visas and provided a full disclosure of prior visits to the United States. Counsel states that the applicant was in the United States in F-1 status between 1985 and 1989. Counsel states that the applicant met her husband during one of her stays in the United States and married him on November 18, 1995. Counsel states that prior to her entry in 1996, the applicant underwent in vitro fertilization in California and when the applicant became pregnant in 1996 she returned to the United States to give birth due to her high risk pregnancy. Counsel states that upon arriving in the United States on August 8, 1996, the applicant was taken into secondary inspection. Counsel maintains that the applicant testified honestly about the purpose of her trip, which was to have a baby and see her husband. Counsel indicates that only after the applicant was placed in removal proceedings in 1996 did the applicant discuss with her husband filing a petition for the applicant to stay permanently in the United States. Counsel states that the applicant answered truthfully to U.S. authorities about not having discussed with her husband the possibility of applying for the applicant to remain in the United States. Counsel states that U.S. authorities did not question the applicant's nonimmigrant intent when issuing visas to her between 1981 and 1996 or when granting her entry into the United States with those visas. Counsel contends that the applicant was truthful to U.S. immigration officers both before and after her entry into the United States on August 8, 1996. Counsel indicates that the AAO has not provided any evidence of false statements or misrepresentations made by the applicant prior to her entry to the United States on August 8, 1996, and cannot now use the applicant's lawful entries as evidence of a fraudulent scheme.

Counsel contends that the applicant was always admitted to the United States on a valid nonimmigrant visa and has always provided a full disclosure of prior visits to the United States. Counsel declares that there is no evidence that the applicant made any false statements or misrepresentations prior to her entry to the United States on August 8, 1996, and that the applicant's lawful entries cannot be characterized as evidence of a fraudulent scheme. Accordingly, counsel declares that the AAO is mistaken in alleging that the applicant was an "intending immigrant" and had a preconceived intent to remain permanently at the time the applicant entered the United States as a nonimmigrant on a B-1/B-2 visitor visa. Citing *Choe v. INS*, 11 F.3d 925, 933 (9th Cir. 1993), counsel states that even if the applicant had entertained thoughts of remaining in the United States legally, "[a]n alien's desire to remain in the United States does not negate [her] intent to depart upon termination of [her] temporary status." The record contains a declaration dated August 19, 2011 in which the applicant states that on August 8, 1996 she never communicated to an immigration officer an intention to reside in the United States. The applicant states that she and her husband have a joint bank account for convenience and that her intention during her last visit was to have a baby in the United States and then only stay for a while. The applicant indicates that for her youngest child she was under a doctor's care in the United States for in vitro fertilization and throughout her pregnancy.

Citing *Choe*, counsel argues that a finding of inadmissibility under section 212(a)(6)(C) of the Act should not be lightly made due to its permanent bar to admission. 11 F.3d 925 at 941. Counsel also cites *Matter of S- and B-C*, 9 I&N Dec. 436, 447 (BIA 1960) and 9 FAM 40.63 N1.3 in favor of

counsel's argument. Counsel cites *Toby v. Holder*, 618 F.3d 963 (8th Cir. 2010) and other cases and states that preconceived intent has been considered in adjustment of status applications as one adverse factor in the balancing of equities in a decision to exercise favorable discretion. Counsel asserts that the Board held in *Matter of Ibrahim*, 18 I&N Dec. 55, 56 (BIA 1981) and *Matter of Cavazos*, 17 I&N Dec. 215 (BIA 1980) that even where there is evidence of preconceived intent, an adjustment application should not be denied in the exercise of discretion where substantial equities are present. Counsel contends that in *Barnedo v. INS*, 17 F.3d 393 (9th Cir. 1993)(unpublished) the Court indicated that close family ties to U.S. citizens is a "special and weighty equity" which outweighs a serious adverse factor such as entry with preconceived intent to remain.

The AAO finds that there is sufficient evidence in the record to establish that the applicant did not have valid nonimmigrant intent, but actually intended to violate her status by permanently residing in the United States, and that the applicant obtained a B1/B2 visa for the purpose of immigrating to the United States.

Section 1101(a)(15) of the Act states that:

The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens--

. . . .
(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure . . .

The regulations define "pleasure," for purposes of B-2 classification as "legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature." 22 C.F.R. § 41.31(b)(2). 8 C.F.R. § 214.1(e) states that "a nonimmigrant in the United States in a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure . . . may not engage in any employment." Thus, an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry (POE), that the purpose of his or her visit is tourism, or to visit relatives, etc.

It is apparent from the explicit language of section 101(a)(15)(B) of the Act, as supplemented by the foregoing regulations, that the B-2, or visitor for pleasure, nonimmigrant category is not intended to be a "catch-all" classification available to all aliens who wish to come to the United States temporarily for whatever purpose. Instead, section 101(a)(15)(B) was designed to encompass a specific, defined class of aliens.

The applicant's waiver application lists periods of residence in the United States spanning from July 1983 to August 1996. The applicant indicated in the waiver application that she was a student in the United States from July 4, 1983 to August 1989. The applicant was in the United States, allegedly as a visitor for pleasure, on the following dates: January 1992 to August 1992, August 1992 to April 1993, May 1993 to August 1994, August 1994 to October 1994, November 1994 to December 1995,

and January 1996 to July 1996. In addition, the record contains other evidence showing that the applicant resided in the United States prior to her August 8, 1996 request for admission. The applicant married her husband in the United States on November 18, 1995, and she gave birth to two children in the United States on December 23, 1981, and October 21, 1996. Additionally, the record contains a State of California Benefits Identification Card issued to the applicant on April 16, 1996, and a Wells Fargo bank account statement issued for the period March 19, 1996 to April 15, 1996 for the applicant and her husband. Moreover, the record reflects that the applicant was employed in the United States in August 1995 with Chase Bank and was employed at Apple 1, Diamond Bar, California from February 1994 to April 1994 in customer service. Lastly, the record conveys that the applicant was arrested and convicted of numerous crimes in the United States from January 1984 to August 1995.

We find unpersuasive counsel's contention that the applicant was not an "intending immigrant" and did not have a preconceived intent to remain permanently in the United States at the time the applicant entered as a nonimmigrant on a B-1/B-2 visitor visa on August 8, 1996. The aforementioned evidence reflects from 1992 to 1996 the applicant resided in the United States for four and one-half years, that the applicant was employed and married her husband here, that she gave birth to her children and was raising them in the United States, that the applicant received state healthcare benefits, and that the applicant had a joint bank account with her husband. This evidence is sufficient to establish that the applicant has not had valid nonimmigrant intent and has not conducted herself as a temporary visitor, but actually intended to violate her status by permanently residing in the United States, and that the applicant obtained a B1/B2 visa for the purpose of immigrating to the United States.

Counsel contends that the applicant was always admitted to the United States on a valid nonimmigrant visa and has always provided a full disclosure of prior visits to the United States. However, we have no evidence in the record that the applicant always revealed the true facts of her residence and overstays in the United States when procuring admission into the United States. In order to gain admission to the United States on a B-1/B-2 nonimmigrant visa, a person must physically present himself for inspection at a port of entry, and present his B-1/B-2 nonimmigrant visa. Such actions inform the immigration officer at the port of entry of the purpose of the visit, and for a B-1/B-2 nonimmigrant visa, the valid purposes are tourism and/or legitimate B-1 activities. Immigration inspectors routinely ask visitors the purpose of their visit, and it is thus reasonable to conclude that the applicant would have had to communicate to the inspecting officer her purpose in coming to the United States on a B-1/B-2 nonimmigrant visa at the time of each entry, and that admission would have occurred only had she communicated activities encompassed within the legitimate parameters of the visa category. As discussed, the evidence in the record establishes a clear and factual basis for a reason to believe that the applicant did not have nonimmigrant intent. Her true intention was to reside permanently in the United States, thereby violating her visitor status and manifesting immigrant intent. Thus, we find that the applicant obtained a B1/B2 visa and procured admission on multiple occasions to the United States using that visa for the purpose of immigrating to the United States, which renders the applicant inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting a material fact and seeking admission into the United States by material misrepresentations.

Counsel argues that even if the applicant had a preconceived intention to remain in the United States beyond her authorized nonimmigrant period as a visitor, the applicant's preconceived intent would not equate to visa fraud, or willful fraud or misrepresentation under section 212(a)(6)(C) of the Act, which requires evidence that the alien sought to procure a visa or admission into the United States by fraud or willfully misrepresentation of a fact. Counsel states that in *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956), the Board stated that while the term "fraud" is not defined by the Act, it "should be used in the commonly accepted legal sense . . . as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party. The representation must be believed and acted upon by the party deceived to his disadvantage." (citations omitted). Counsel declares that there is no definition of the term "misrepresentation" under the Act, and that the U.S. Department of State Foreign Affairs Manual (FAM) at 9 FAM 40.63 N4.1 provides that "[a] misrepresentation is an assertion or manifestation not in accordance with the facts. A misrepresentation requires an affirmative act by the alien . . . including in in an oral interview or in written applications, or by submitted evidence containing false information." Counsel states that the FAM states that silence or the failure to volunteer information does not in itself constitute a misrepresentation.

We disagree with counsel's argument that the applicant's preconceived intention to remain in the United States beyond her authorized nonimmigrant period as a visitor would not render the applicant inadmissible under section 212(a)(6)(C) of the Act. As previously discussed, the evidence in the record establishes that the applicant did not have nonimmigrant intent. The applicant's true intention was to reside permanently in the United States, thereby violating her visitor status and manifesting immigrant intent. Essentially, the applicant obtained a B1/B2 visa and procured admission on multiple occasions to the United States using that visa for the purpose of immigrating to the United States. These actions render the applicant inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting a material fact and seeking admission into the United States by material misrepresentations.

Moreover, the sworn statement in the record reflects that the applicant intentionally misrepresented her criminal record by not disclosing her entire criminal history during her secondary inspection interview. On August 8, 1996, the following questions and responses were made during the applicant's secondary inspection interview:

Q. Have you ever been arrested at anytime or anywhere in the world for any offense?

A. Yes.

Q. When was the most recent time you were arrested?

A. Approximately 1994.

Q. For what were you arrested?

A. I can't remember exactly, unlawful possession of a check, and uttering a check.

Q. Were you convicted?

A. I plead [sic] no contest to one of the charges, I think it was the 476, or unlawful possession.

...

Q. When else were you arrested?

A. In approximately 1983.

Q. For what were you charged.

A. For writing bad checks on my account or fraud or grand larceny by check, I can't remember exactly.

Q. Where were [sic] did this take place?

A. In Fairfax, Virginia.

Q. Were you convicted of this offense?

A. Yes.

Q. How long were you sentenced?

A. Not less than 1 year, not more than 3 years.

...

Q. When else were you arrested?

A. That is it.

The applicant failed to disclose all of her arrests and convictions. In 1994, the applicant was arrested for battery and charged with that offense on April 20, 1994 in the Municipal Court of Los Cerritos Municipal District, County of Los Angeles, State of California. The judge ordered diversion with conditions. On October 4, 1985, the applicant pled guilty to forgery in the Superior Court of the District of Columbia. In 1983, the applicant had three separate criminal cases filed against her in Fairfax County, Virginia: criminal case number [REDACTED], [REDACTED], and [REDACTED]. For criminal number [REDACTED] the applicant was arrested on October 7, 1983 and convicted on January 18, 1984 of grand larceny by check. She was ordered to serve two years in the Penitentiary House of the Commonwealth. In mitigation of her punishment, she received a suspended sentence and was placed on probation. For criminal number 41012, the applicant was arrested on October 12, 1983 for uttering and delivering a forged check, for which the applicant was found guilty. For criminal number [REDACTED] the applicant was convicted of uttering with intent to defraud a forged check. The applicant's punishment for criminal case numbers [REDACTED] and [REDACTED] was the same as that of criminal number [REDACTED].

In failing to disclose all of her arrests, the applicant intentionally misrepresented her criminal record. The applicant's misrepresentation was made in connection with her entry into the United States, and is material because the misrepresentation tends to shut off a line of inquiry which is relevant to the applicant's eligibility for admission into the United States. *See Matter of S- and B-C-, supra.* In sum, we find the applicant is inadmissible under section 212(a)(6)(C) of the Act for willfully

misrepresenting a material fact and seeking admission into the United States by material misrepresentations of her criminal record and eligibility for admission.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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.

A waiver of inadmissibility under section 212(i) 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 or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. Once extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). A waiver under section 212(i) of the Act will also waive the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having committed crimes involving moral turpitude.

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.

The only qualifying relative in this case is the applicant’s U.S. citizen husband. The applicant has not listed her spouse as a qualifying relative on the waiver application and she has provided no evidence of hardship to him if the waiver is denied. Further, evidence in the record (income tax returns for 2004, 2005, and 2006; a note from the officer who adjudicated the applicant’s waiver application; and the applicant’s spouse’s withdrawal of the petition for alien relative (Form I-130) filed on the applicant’s behalf) indicates that the applicant and her husband are separated, and no evidence has been submitted which demonstrates that they intend to reconcile.

Thus, the AAO finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act.

Furthermore, we deny the waiver application in the exercise of discretion based on the adverse factors in the case, which are the nature and seriousness of the applicant’s crimes, and the applicant’s significant violations of the United States’ immigration laws. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The applicant’s multiple crimes reflect dishonesty and a lack of integrity, as does the applicant’s abuse of the privileges afforded by a tourist visa by numerous overstays on the visa and engaging in employment.

Thus, when we consider and balance the adverse factors in this case, the applicant’s crimes and her

significant violations of immigration laws, with the favorable factors such as the applicant's close relationship with her sons, and hardship to her sons, and even assuming hardship to the applicant's spouse, we find that the adverse factors outweigh the favorable factors. Therefore, we find that the grant of relief in the exercise of discretion is not warranted in this case.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.