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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**



H2

Date: APR 04 2012

Office: LOS ANGELES

FILE:



IN RE:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, and the applicant appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal, and the matter is again before the AAO on motion to reopen and motion to reconsider. The motion will be granted, the matter will be re-opened, and the appeal will be sustained.

The applicant is a native and citizen of Iran 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 been convicted of crimes 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 and reside with his U.S. citizen wife and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 18, 2006. Upon review, the AAO also found that the applicant failed to establish extreme hardship to a qualifying relative and dismissed the appeal. *Decision of the AAO*, dated March 6, 2009.

On motion, counsel for the applicant asserts that the applicant has shown that his wife and children will experience extreme hardship if the present waiver application is denied. *Brief from Counsel*, dated April 2, 2009.

The record contains a statement from counsel on Form I-290B; a statement from the applicant's wife; a psychological evaluation for the applicant's family; a copy of the applicant's passport; a copy of the applicant's marriage certificate; a copy of the applicant's wife's naturalization certificate; copies of the applicant's children's birth certificates; tax records for the applicant, and; documentation relating to the applicant's criminal convictions. On motion, the applicant supplements the record with documentation relating to his son's learning disability and special education services; an updated psychological evaluation for his family members; and tax records. The entire record was reviewed and considered in rendering this decision.

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 September 15, 1999 the applicant was convicted of four felonies, including: two counts of receiving/buying stolen property under California Penal Code § 496(B); altering/defacing a vehicle identification number to sell or transfer under California Vehicle Code § 10802, and; owning/operating a "chop shop" under California Vehicle Code § 10801. He was sentenced to serve 364 days in the [REDACTED]. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. He does not contest his inadmissibility on motion. He requires a waiver under section 212(h) of the Act.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

(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 . . .; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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 wife and 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 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).

On motion, the applicant has now shown that his 12-year-old son will suffer extreme hardship should the present waiver application be denied. The applicant has supplemented the record with clear documentation to show that his son has a significant learning disability that requires special educational services. Documentation supports that he is receiving such services in the United States. It is evident that he would face significant hardship should he relocate to Iran and discontinue his special education. The applicant provides an updated evaluation of his family from a clinical assistant professor of psychiatry, [REDACTED] who notes that the applicant's son is two grades below his age level, and that he faces symptoms of attention deficit hyperactivity disorder (ADHD), impairment of his visual motor skills, and difficulty comprehending and following directions. [REDACTED] cited authority to support that there is a shortage of special education facilities in Iran, that there is no official classification of learning-disabled children in the country, and that services available to Iranian children with developmental and cognitive deficits are scarce. [REDACTED] provided a clear basis to support his conclusions and the credibility of the reports he

references. The applicant's son's disability constitutes an unusual challenge that is not commonly faced by individuals who relocate abroad due to the inadmissibility of a parent.

Counsel provides a more detailed discussion of conditions in Iran, and the impact they would have on the applicant's family members, including his son with a disability. Counsel supports his assertions with additional reports on conditions in Iran, including information on religious freedom and general human rights. The AAO takes notice that the United States Department of State issued a travel warning for Iran on October 21, 2011 that identifies risks to U.S. citizens including harassment or arrest and repression of religious minorities. We acknowledge that the applicant's son was born in the United States and he has resided here for the duration of his life, and that adapting to Iran would pose significant challenges due to adapting to an unfamiliar culture and language. [REDACTED] observed that the applicant's son does not speak Farsi. He would also endure separation from his family members, community, and country of nationality. He would share in the emotional and financial challenges faced by his family. It is evident that his learning disability would significantly exacerbate his difficulty. Based on the foregoing, the AAO finds of the applicant has now shown that his 12-year-old son would face extreme hardship should he relocate to Iran.

The applicant has also established that his 12-year-old son will suffer extreme hardship should he remain in the United States without the applicant. As discussed above, his learning disability creates unusual challenges for him. There is ample evidence in the record to show that the applicant is the primary income earner for his family, and that his absence would disrupt their family structure and likely require the applicant's wife to discontinue offering full-time support to her children so that she may engage in employment. The reports on the applicant's son's learning challenges reflect that the applicant's wife has played an important role in teaching him at home to support his academic efforts. It is evident that he would suffer detriment should she be less available to assist and support him. The AAO acknowledges that separation from the applicant would also result in significant psychological difficulty for the applicant's son, and that dividing their family as he struggles to develop with a disability constitutes unusual circumstances.

Counsel renews assertions that the applicant's wife and children will suffer economic difficulty should the applicant depart the United States and they remain. While the record lacks sufficient evidence to show that they would be unable to meet their needs without the applicant's assistance, we give due consideration to the challenge of removing a primary income earner from a household with two children.

It is noted that, on motion, counsel contends that the documentation submitted with the initial appeal was sufficient to show extreme hardship to the applicant's family members, and that the AAO erred in failing to apply "principles of common sense and logic" to draw conclusions regarding challenges the applicant's family would face. In proceedings for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant did not provide sufficient explanation or evidence to show extreme hardship to a qualifying relative with the initial appeal, and the AAO appropriately declined to infer assertions on behalf of the applicant. However, with the detailed explanation and additional probative documentation provided on motion, we now conclude that the

applicant's 12-year-old son will suffer extreme hardship should the present waiver application be denied, whether he relocates to Iran or remains in the United States. Section 212(h) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

The applicant has been convicted of multiple theft-related offenses that call into question his veracity and respect for the laws of the United States.

The positive factors in this case include:

The applicant's 12-year-old U.S. citizen son will face extreme hardship should the present waiver application be denied. The applicant's U.S. citizen wife and older son will endure significant hardship should the applicant reside outside the United States. The applicant has operated a business in the United States to support his family. The record reflects that the applicant has not engaged in further criminal acts since his convictions in 1999, in over 12 years. The record does not show that the applicant has engaged in violent behavior at any time. The applicant, his wife, and their children have significant ties to the United States, and the record indicates that they have no ties in Iran. The applicant has resided in the United States for over 29 years, and he would endure substantial challenges should he now return to Iran.

The applicant's criminal activity is a strong negative factor in this case. However, the record does not show that the applicant has a propensity to engage in further criminal acts. The AAO finds that the applicant's presence in the United States poses significant benefits for his wife and children, and that these positive factors outweigh the gravity of his prior misconduct. Accordingly, the AAO finds that the positive factors in this case overcome the negative factors, and the applicant warrants a favorable exercise of discretion.

As noted above, in proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has now met his burden that he merits approval of his application.

**ORDER:** The motion is granted. The appeal is sustained.