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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, D.C. 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

*H2*

[REDACTED]

DATE: **AUG 13 2012** OFFICE: CALIFORNIA SERVICE CENTER [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(h)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 application for waiver of inadmissibility was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of the Dominican Republic and a citizen of Venezuela 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 applicant, through counsel, seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen spouse and children.

The Director, California Service Center 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. *See Decision of the Director, California Service Center*, dated April 15, 2010.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) did not fully consider the affidavits of support submitted in support of the applicant's waiver application, and erred in determining that the applicant's U.S. citizen sons and daughters would not suffer extreme hardship because of the applicant's inadmissibility as: the applicant's minor children reside with her; she is their sole provider; and they attend school in the United States and have never lived in the Dominican Republic, where there is vast poverty and unemployment. *See Notice of Appeal or Motion* (Form I-290B), dated May 5, 2010.

The record contains, but is not limited to: briefs from current counsel and a previous accredited representative; letters of support; identity and financial documents; and country conditions information. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

(i) ... any 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-

...

(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 *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.” *Id.* 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. *Id.* 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 shows that on or about June 6, 2001, the applicant was convicted of multiple counts of credit card fraud, including the violation of the Massachusetts General Laws (MGL), chapter 266, § 37C(c). At the time of the applicant’s conviction, MGL, chapter 266, § 37C provided, in relevant part:

Whoever, with intent to defraud, ... (c) falsely makes or falsely embosses a purported credit card or utters such a credit card, ... shall be punished by a fine of not more than two thousand dollars, or by imprisonment in a jail or house of correction for not more than two and one half years or in the state prison for not more than five years, or by both such fine and imprisonment.

Whoever has in his possession or under his control four or more credit cards which are falsely embossed shall be presumed to have violated clause (c).

MGL, chapter 266, § 37C(c) is violated when the offender has the “intent to defraud” by falsely making, embossing, or uttering a credit card. The U.S. Supreme Court in *Jordan v. De George* concluded: “Whatever else the phrase ‘crime involving moral turpitude’ may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude . . . Fraud is the touchstone by which this case should be judged. The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 U.S. 223, 232 (1951). Therefore, the applicant’s offense is categorically a crime involving moral turpitude, and she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest her inadmissibility on appeal.

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

The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 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 . . . ; 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 or the applicant's grandchildren can be considered only insofar as it results in hardship to a qualifying relative. For the aforementioned reasons, the applicant's U.S. citizen spouse, sons, and daughters are qualifying relatives in this case.<sup>1</sup> 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-*

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<sup>1</sup> The AAO notes that the appeal does not include any assertion or evidence of extreme hardship to the applicant's U.S. citizen spouse.

*Gonzalez*, 22 I&N Dec. at 568; *In re 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 *In re 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).

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). In most discretionary matters, the alien bears the burden of proving eligibility simply by showing equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The applicant contends that her youngest daughter will suffer extreme hardship in the applicant’s absence as the daughter needs her nurturing guidance to assist the daughter with adolescence and to develop into a healthy, productive citizen. The applicant also contends that her family needs her to serve as the head of household and the primary caregiver for her two grandchildren as the family would not have the means to care for them. The applicant further contends that she and her family would suffer extreme hardship as: she has lived most of her life in the United States, has strong community ties, and does not have any family ties outside the United States; her mother, husband, children, and grandchildren are in Rhode Island; and she would be unable to financially support herself in the Dominican Republic, her country of nationality, as there is not any economic opportunity. The applicant’s oldest son indicates that: he lives on his own, near the home in which his siblings and the applicant live; the applicant is the “glue that holds the family together” as the applicant is the sole caretaker for him and his siblings; he and his siblings would be unable to support themselves; and he would be forced to take on more responsibility than anyone his age should have. The applicant’s oldest daughter discusses how the applicant has served as the primary caregiver for her son. And, the applicant’s youngest daughter indicates that the applicant would positively contribute to the United States.

Although the applicant's children may experience some hardship in the applicant's absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record does not include any specific evidence of the sons' and daughters' current mental health, physical conditions, or finances that demonstrate that they would be unable to support themselves in the applicant's absence. And, the record does not include any specific evidence of the applicant's employment or salary, only a general indication that she is "self-employed" and serves as the family's head of household. Further, although the record includes a medical record, indicating that the applicant has "a few tiny densities projected over the right upper lung field", the record does not include any evidence of the severity of the applicant's medical condition and how the condition would impact the sons and daughters. See [REDACTED] dated September 19, 2008. The AAO is thus unable to conclude that the record establishes that the applicant's sons' and daughters' hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship that the applicant's sons and daughters may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's sons and daughters will suffer extreme hardship as a result of separation from the applicant.

Additionally, the applicant's previous accredited representative contends that the applicant will suffer extreme hardship if she were to relocate to the Dominican Republic as the applicant: has been residing in the United States since the age of 15 years; attended a public high school in the United States; has been married to a U.S. citizen for 15 years and has raised children and grandchildren in the United States; and no longer has relatives or contacts in the Dominican Republic. The applicant contends that she and her family will suffer extreme hardship if they were to relocate to Venezuela, her country of citizenship, as there is violent crime and a weakening of democratic institutions under the ruling regime. The applicant's oldest son and daughters indicate that they would suffer extreme hardship if they relocated to Venezuela or the Dominican Republic as: they have no cultural or family ties there, or access to educational and economic opportunities; and they have community ties in the United States.

The record is sufficient to establish that the applicant's sons and daughter will suffer hardship if they were to relocate to Venezuela or the Dominican Republic to be with the applicant. The sons and daughters have lived continuously in the United States as U.S. citizens. They maintain strong familial and social ties in the United States, and do not have any familial or social relationships in Venezuela or the Dominican Republic. Considering all stated elements of hardship, along with the normal hardships associated with relocation, the AAO finds that the applicant's sons and daughters will suffer extreme hardship if they relocate to Venezuela or the Dominican Republic.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. at 886. Furthermore, to relocate and suffer extreme hardship, where

remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. In re Pilch*, 21 I&N Dec. at 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse, sons, or daughters as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.