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



H2

DATE: **AUG 28 2012** OFFICE: LOS ANGELES, CALIFORNIA File:

IN RE: Applicant:

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.

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 with the field office or service center that originally decided your case by filing a 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 waiver application was denied by the Field Office Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his lawful permanent resident mother and father.

The Field Office 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. *See Decision of the Field Office Director*, dated June 4, 2010.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) failed to adequately consider and evaluate each hardship factor individually and cumulatively to determine their effects on the applicant's qualifying relatives. *See Counsel's Brief*, dated June 4, 2010.

The record contains, but is not limited to: Form I-290B and counsel's brief; various immigration applications and petitions; hardship letters; a letter from the applicant; letters in support of the applicant and his parents; a psychological evaluation; birth and familial records; and documents pertaining to the applicant's criminal record. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

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

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

conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record shows that the applicant was convicted on or about November 13, 2007 for grand theft under California Penal Code section 487(D)(1) and receiving stolen property under California Penal Code section 496D(A), both felonies, for his conduct on September 15, 2007 when he was 19-years-old. The applicant was sentenced to three years formal probation and three days in county jail. Based on these convictions, the Field Office Director determined that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. The applicant does not contest his inadmissibility on appeal. 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.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's lawful permanent resident mother and father. Hardship to the applicant himself will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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-I-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 record reflects that both the applicant's 50-year-old mother and 51-year-old father are natives and citizens of Mexico and U.S. lawful permanent residents who have lived in the United States since about 1997. The applicant's mother writes that she does not speak, write or read English and suffers an ongoing loss of hearing in both ears. She states that the applicant is the only person who can take care of her and her husband, and he drives her to the hospital for checkups and makes sure she takes her medicine. The applicant's mother maintains that the thought of separation from the applicant is heartbreaking and stress over that possibility has caused her blood pressure to increase. The applicant's father writes that he suffers asthma and allergies which give him respiratory problems, and that the applicant is the only person whom they can trust and count on to take care of them. He states that the applicant makes sure he and his wife take their medicine and as he does not drive, the applicant is the one person they count on to take them to doctor's appointments. The applicant's father maintains that his English does not allow him to "communicate 100% with the doctors," but the applicant always talks to them to make sure he is aware of all precautions. The record contains no documentary medical evidence related to the physical health of the applicant's mother or father. [REDACTED], asserts in a psychological evaluation, that the applicant's father suffers from asthma, stomach problems and allergies for which he uses Albuterol, Claritin, Delayed, and Singulair, and that the applicant's mother suffers from hypothyroidism, hypertension, high cholesterol and gall bladder problems that require surgery for which she uses Atenolol, Levothyroxine, Zocor and Ranitidine. While it appears that the applicant's parents reported such health conditions and medications to [REDACTED], no corroborating documentary medical evidence has been submitted.

[REDACTED] asserts that because the applicant's father is the family's only financial provider, he relies heavily on the financial support that the applicant provides for the family. In addition to this assertion being inherently contradictory, the record contains no financial records demonstrating any income or expenses for the applicant, his father, or his mother.

The applicant's parents maintain that he has always lived with them and they cannot imagine life without their son by their side. The applicant's father adds that if the applicant's case is denied, he and his wife would lose the only person who gives them strength, support, and he will to live "along with plenty more things." Counsel asserts that while the applicant's mother's brother, sister and other relatives live in the United States, they reside outside of the state of California. Neither counsel nor the applicant's parents address why none of the numerous individuals who prepared attestations on behalf of the applicant and his parents could be counted on for any type of support in the applicant's absence. The applicant's mother states that she is afraid for her son's life were he to be removed to a country where the criminal level is at its worst, where he has not resided since he was a child and has little knowledge, and where his Spanish would not be at a level where he would be able to express himself adequately. The AAO notes that the record contains no documentary evidence addressing country conditions in Mexico.

diagnoses the applicant's father with major depressive disorder, single episode, moderate, anxiety disorder, NOS, and panic disorder without agoraphobia and contends that without his son, the applicant's father "would experience extreme suffering, emotional, physical and psychological hardship and devastation." diagnoses the applicant's mother with anxiety disorder, NOS and major depressive disorder, single episode, moderate and asserts that without the applicant, his mother "would have to face a life of emotional pain, tension, stressed, feeling overwhelmed and emotionally devastated." [sic].

notes that both the applicant's parents were referred to seek a psychiatric evaluation to determine the need for medicine, as well as supportive psychotherapy. No evidence demonstrating that either parent followed this referral has been submitted on appeal. The AAO recognizes that the applicant's parents, with whom the applicant has always resided and on whom they naturally rely for a number things, will face emotional challenges related to separation from him. However, the evidence does not establish that the challenges described rise beyond those normally associated with separation due to a loved one's inadmissibility or removal.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's mother and father. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relatives, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, counsel asserts that the applicant's parents would be unable to afford in Mexico the expenses associated with their medical conditions as they are advanced in age and will have a difficult time obtaining employment. No documentary evidence has been submitted addressing the economy, employment, or medical costs in Mexico and the record does not demonstrate that the applicant or his parents would be unable to secure employment or support themselves there. Counsel contends, without foundation or supporting evidence, that it would be impossible for the applicant's parents to re-establish themselves in Mexico due to their age. Nothing in the record demonstrates that at 50 and 51 years of age the applicant's mother and father are too old to reside successfully in Mexico.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's mother and father, including their re-adjustment to life in Mexico after 15 years away;

the applicant's father's employment in the United States; and the couple's employment, economic, health-related, and safety concerns related to Mexico. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen mother or father would suffer extreme hardship were they to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his mother and father face are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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 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