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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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Date: **JAN 23 2012** Office: CALIFORNIA SERVICE CENTER 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 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,

Michael Shumway
for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application 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 applicant is a native and citizen of Italy 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 committing crimes involving moral turpitude. 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 his 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. The applicant submitted a timely appeal.

On September 2, 2011, the AAO issued a notice of intent to deny (NOID) the appeal. The AAO concluded that the applicant established exceptional and extremely unusual hardship to a qualifying family member for purposes of relief under section 212(h) of the Act. The penal certificate reflected the applicant was convicted of fraudulent bankruptcy (committed on July 22, 1986 in Milan), conspiracy (committed on November 10, 1983 in Milan), corruption for an act contrary to official duties (committed on June 1980 until November 1983 in Campione d' Italia), violence and threat to public official and violence to oblige others to commit a crime (committed on June 1977 until July 1977 in Campione d'Italia), and robbery and private violence (committed on April 27, 1979 in Milan). The AAO found that it was not clear from the record that the conspiracy and corruption convictions were politically motivated and that the corruption conviction related to the conspiracy.

In response to the NOID, the applicant submits a sworn statement from his criminal defense attorney, affidavits from a journalist and a chaplain, newspaper articles, penal certificates, court transcripts, letters, and other documentation.

Counsel contends that the applicant's convictions were politically motivated and were the product of a politically biased judiciary, an antiquated judiciary system that did not take into consideration evidence or testimony, and a political smear campaign. Counsel states that the applicant and [REDACTED] owned Sit Sanremo Spa, and competed with [REDACTED] the owners of Flowers of Paradise Spa, for a contract to manage the casino Casino di Sanremo. Counsel states that the contract was awarded to the owners of Flowers of Paradise Spa, and that the applicant appealed the decision. Counsel maintains that the appeal was sustained because the owners of Flowers Paradise Spa were unable to perform the casino contract.

Counsel states that the appeal was the catalyst for the criminal proceedings brought against the applicant. Counsel states that on [REDACTED] used their political connections to have over one hundred people arrested, including the applicant and his wife. Counsel states that the applicant was tried and convicted for political reasons based on the prior Italian system of "free conviction." Counsel states that seven days after the applicant's conviction a new Italian Code of Criminal Procedure was enacted, ceasing the procedures that were used against the applicant. Counsel maintains that there was no evidence incriminating the applicant and the evidence presented established the applicant's innocence. Counsel asserts that the applicant's convictions were based on the Magistrate's "free conviction" that the applicant had to have known that something was going on, regardless of evidence to the contrary, and that the convictions would not have occurred under the new Italian Code of Criminal Procedure. Counsel states that the public

official that the applicant was convicted of threatening, robbing, and causing violence to was [REDACTED], and that [REDACTED] testified that he did not know the applicant and had never spoken to him. Counsel declares that [REDACTED] indicated that he had reported facts to the authorities but had never charged or identified any person. Counsel maintains that the applicant's defense attorney stated that politicians had the journalists in their pockets and the journalists accused the applicant of crimes. Counsel states that the applicant explained that [REDACTED] received threatening phone calls and was robbed of a watch, and testified, under oath, that the applicant had never met [REDACTED] or committed a crime against him, or had anyone else do so.

In regard to the bankruptcy conviction, counsel states that Financial Police Unit records convey that the applicant did not have an ownership interest in [REDACTED] which ran the [REDACTED]. Counsel contends that even though the [REDACTED] indicated that the investigation did not show with certainty that the applicant was actually an administrator of [REDACTED], the [REDACTED] concluded that the applicant must have been a silent partner. Counsel conveys that the [REDACTED] determined that it was not relevant that the applicant had not participated in criminal conduct because the applicant was bound to know that such conduct was going on. The defense attorney claims that the bankruptcy conviction was based on "free conviction" because the investigations did not show with certainty that the applicant was the administrator in fact of the [REDACTED] or a silent partner. The defense attorney states that the judges determined that, the fact that the applicant had not materially participated in the falsification of the records was not relevant, because the applicant was:

Bound to know that the records had to be modeled so as not to let third parties know the facts that would prejudice them, and that, therefore, [the applicant] was in agreement to the falsification of the same . . . whether one qualifies [the applicant] as a silent partner of the company[,] that is as an administrator in fact[,] or again[,] as a direct collaborator of Traversa in the management of the company.

The defense attorney contends that the applicant could not have committed the bankruptcy crime for two reasons: [REDACTED] was solvent when the applicant was arrested and the company's corporate records indicate that the applicant was not a shareholder of [REDACTED].

Counsel maintains that conflicts of interest surrounded the criminal proceedings such as the initial prosecutor, [REDACTED], having practiced law with [REDACTED] brother working for [REDACTED] and [REDACTED] link to organized crime. The defense attorney conveys that part of the [REDACTED]'s financing was from the Socialist Party, which supported the former [REDACTED]. The defense attorney states that the journalist [REDACTED] conveyed that [REDACTED] Minister of the Interior began the police and judicial operation against the applicant, and that the applicant was charged with crimes by politically motivated judiciary. The defense attorney conveys that the applicant was found guilty in an antiquated judicial system that did not take into consideration evidence and testimony, and where close cooperation existed between prosecutors and judges.

Counsel contends that the applicant's convictions were politically motivated and that the applicant was convicted of fabricated charges. Counsel conveys that in *Matter of F-*, 8 I&N Dec. 469, 471 (BIA 1959), the Board stated that the record of a foreign court showing conviction is to be taken as conclusive evidence of conviction of the crimes disclosed by it, but the Board is precluded from giving the proceedings any weight where sufficiently compelling evidence calls into question the

fundamental fairness of the proceedings generating the conviction. (citing *Esposito v. INS*, 936 F.2d 911 (7th Cir. 1991)). Counsel declares that the evidence that raises doubts of fundamental fairness in the instant matter are the conflicts of interest relating to the prosecutor and the prosecutor's brother, a politically controlled media, and a judiciary that disregarded evidence exonerating the applicant.

To qualify for the "purely political offense" exception, the offense must be completely "political." *Matter of O'Cealleagh*, 23 I&N Dec. 976, 981 (BIA 2006). The Board in [REDACTED] addressed whether the respondent's crime of aiding and abetting the murder of British corporals was a purely political offense. *Id.* at 982-984. The Board concluded that the offense was not fabricated and trumped in the sense that the British Government lacked a good faith belief that the charges and conviction were well founded, and that the respondent was prosecuted only for political purposes. *Id.* The Board found that the murders had, in fact, occurred; evidence showed that the respondent participated in the assault; and the authorities were shown to have made a sincere effort to identify and punish those persons responsible for the deaths. *Id.*

The defense attorney maintains that the crimes of violence and threats to a public official, and robbery and private violence, relate to a period when [REDACTED] held the position of City Councilman in the Municipality of [REDACTED]. The applicant submitted parts of a hearing transcript relating to the questioning of [REDACTED]. The translation of the hearing transcript includes a notation from the applicant's defense attorney that is not part of the original hearing transcript. The notation states: "Excerpt pages 26 and 31 - pertaining to [the applicant] and his sentences numbered 3, 4, 5, 6 re: questioning by various defense attorneys of [REDACTED]"¹ The excerpt from page 26 of the transcript is in regard to a question posed to [REDACTED] by his defense attorney and it reads:

D: ([REDACTED]) Can you give us a clarification on this . . . of this expression you used?

P: [President/Judge Presiding Hearing] That is you reported the facts that have occurred to you, is not it?

TF: [REDACTED] Just to the point and that is it.

D: ([REDACTED]) So you state that it was the journalists to attribute particular significance to certain situations, or to these situations which occurred [to] you?

TF: [REDACTED] I read . . . I read . . . I read . . . sometimes some articles of the press that related . . . to this issue, but I have never charged/identified anyone, no one in particular for these facts. I reported the facts without having to charge anyone. That the facts occurred to me is a sure thing, but the journalists have always had to

¹ The translator has mistakenly spelled the name [REDACTED]. Also, the sentences numbered 3, 4, 5, 6 related to the offenses violence and threat to a public official, violence for forcing others to commit a crime, robbery, and private violence.

put or add something which I do not agree with, the responsibility of sort is of the journalists.

The second excerpt, from page 31, is the applicant's defense attorney posing a question to [REDACTED] Fernando. It reads:

D: [REDACTED] And a last question on [REDACTED] if you have ever known, if you have ever related to him, and if you had the opportunity to talk to him, I don't know""

P: [Presiding Judge]: [REDACTED], have you ever seen [REDACTED]

TF: [REDACTED] I do not know him, I have never spoken with this gentleman.

This evidence is not persuasive in demonstrating that the applicant was prosecuted and convicted of crimes against [REDACTED] for purely political reasons. The applicant submitted such a narrow excerpt of the transcripts that the charge and incident that are referred to by [REDACTED] is not revealed, and the narrow scope of questioning on page 31 does not give any context to the questions raised about the applicant. Even more important, it is the applicant's defense attorney who claims that the applicant's sentences numbered 3, 4, 5, 6 pertain to crimes against [REDACTED]. The applicant has not submitted the court records from the Italian court that charged him with committing crimes against [REDACTED] who also seems to be a criminal defendant. Thus, the applicant has not demonstrated that the offenses of violence and threats to a public official, robbery, and private violence were fabricated and that he was prosecuted only for political purposes.

In regard to the bankruptcy conviction, the applicant need not have been a shareholder or silent partner of [REDACTED] to be guilty of the bankruptcy offense. The submitted court transcript indicates that the judges analyzed whether the applicant was involved in the bankruptcy as a silent partner, an administrator in fact, a close collaborator in the management, or in concurrence in the crime. The applicant states in his affidavit that he did not have any position in [REDACTED] and that he brought groups of players to casino, earning a commission as a "porteur." The applicant states that the bankruptcy occurred three years after his arrest. The court transcript suggests that the applicant was involved in the management of [REDACTED] as the "direct collaborator" of [REDACTED] who is a shareholder of [REDACTED]. Even though the bankruptcy occurred three years after his arrest, the criminal acts that were carried out in furtherance of the illegal bankruptcy may have predated the applicant's arrest. Consequently, the applicant has not fully demonstrated that the offense of bankruptcy was fabricated and that he was charged and convicted of this offense for purely political reasons.

In regard to the article printed in *Il Giornale* "Advanced Suspicions of Corruption in the Investigation on the [REDACTED] A Former President of the Court is Accused by Two Deputies of the Radical Party," dated June 1, 1988, implicates the applicant's business partner, [REDACTED] into entering into a silent agreement with [REDACTED] whereby the casino contract would be awarded to the applicant's company. The article states:

It was on November 11, 1983, and by order of arrest by the Judges of Milan, [that] public officials and political aids of the "city of flowers," ended up in prison, everyone accused of corruption and mafia-type criminal association in relation to contracting out the management of the gambling house in San Remo. . . .

Here is what they have written in their interrogatories for this matter: "It surfaced that in various depositions there have been formulated very serious accusations of corruption and other crimes against several judges and, in particular against the former [redacted] who after ordering the seizure of the Casino at the request of the company of [redacted] to the detriment of the City of [redacted] the agreement between [redacted] and [redacted] for the silencing of the first and the award to the second, sanctioned, sanctioned [sic] with a toast of the President and the two men then accused of mafia-type conspiracy. Against [redacted] as per testimony of many defendants was affirmed that he would have received by [redacted] on that occasion.

The two leaders of the radical party also throw darts against the prosecutor [redacted] . . . According to what radical parliamentarians are writing, [redacted] would have put aside for two years all the charges against [redacted] and against the attorney [redacted] . . .

Thus, the newspaper article indicates that the applicant and his business partner were engaged in criminal misconduct with the owners of [redacted] which is inconsistent with the applicant's allegation that his convictions were politically motivated by the owners and supporters of [redacted]

The submitted excerpts from newspaper articles and trial transcripts discuss special knowledge that the owners of [redacted] had about the November 11, 1983 arrests, the awarding of the casino contract, the corruption of judges and prosecutors, and [redacted] The journalist [redacted] discusses in his declaration bidding for the casino, and in very general terms, the applicant's arrest and trial. Considered collectively, this evidence does not demonstrate that the applicant was convicted of crimes for purely political reasons.

In regard to the corruption charge, the applicant has not submitted into the record the statements that the defense attorney claims were made by parties and witnesses affirming that they have never known of the applicant to have committed any acts of corruption.

In sum, the applicant has not demonstrated through the submitted evidence that his convictions involved fabricated and trumped charges in that the magistrates lacked a good faith belief that the charges and conviction were well founded, and that the applicant was prosecuted only for political purposes.

The applicant's criminal defense attorney maintains that all of the applicant's crimes are linked through a conspiracy and that the applicant's only sentence is for conspiracy to commit an offense. The defense attorney states that the penal certificate shows seven offenses grouped under a premise of "continuation," and that the judges made this premise without evidence of a conspiracy or the

applicant's commission of the underlying substantive offenses. Counsel claims that the penal certificate conveys that the applicant's seven criminal convictions were all entered on December 2, 1998, and that the submitted affidavits indicate that the "criminal convictions were the result of a single arrest, a single judicial proceeding, and a single sentence." Counsel indicates that the plain language of the applicant's sentencing provision, which states "given the continuation among the crimes in points 1) 2) 3) 4) 5) 6) 7) Years 7 Months 4 of Imprisonment," relays that the crimes are part of a single scheme and have been carried out in furtherance of that scheme. Counsel contends that the phrase "contin. in concorso," in the penal certificate translates to "continually and in concurrence with," conveying that the convictions are linked. Counsel indicates that the criminal conviction for "associazione" or "conspiracy" relates to the crimes in provisions two through seven in the penal certificate. Counsel states that, even though the penal certificate shows the crimes as committed on different dates and in different locations, when read in conjunction with the term "continually and in concurrence with" it is clear they are related and part of a single scheme, and done in furtherance of that single scheme. Counsel asserts that the applicant's conviction was based on a single investigation initiated under the former Italian system of "free conviction" that allowed judges to convict a person, without any evidence, and contrary to due process of law, based solely on their "free belief."

In order for a foreign conviction to serve as a basis for a finding of inadmissibility, the conviction must be for conduct deemed criminal by United States standards. *Matter of McNaughton*, 16 I&N Dec. 569, 572 (BIA 1978); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135, 137 (BIA 1981). Counsel indicates that the applicant was convicted of offenses on the basis of a conspiracy and that the judges found the applicant guilty of crimes without evidence of his personal involvement in the offenses, but counsel has not demonstrated that the applicant's offenses would not have been deemed crimes or prosecuted in the United States.

In the United States, a conspirator may be held liable for criminal offenses committed by a co-conspirator if those offenses are within the scope of the conspiracy, are in furtherance of it, and are reasonably foreseeable as a necessary or natural consequence of the conspiracy. *See U.S. v. Vazquez-Castro*, 640 F.3d 19, 24 (1st Cir. 2011). In some jurisdictions, this doctrine has been applied without the reasonably foreseeable element, and thus, vicarious liability is imposed where the substantive offenses are committed by other members of the conspiracy when the offenses are during and in furtherance of the conspiracy. *See U.S. v. Aramony*, 88 F.3d 1369 (4th Circuit 1996).

In addition, laws in the United States punish "racketeering activity" such as gambling, robbery, bribery, and extortion. *See* 18 U.S.C. § 1962. 18 U.S.C. § 1962(c) makes it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." The term "enterprise" is defined broadly as including "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). There is no restriction upon the associations: an enterprise includes any union or group of individuals associated in fact. In *U.S. v. Turkette*, 452 U.S. 576 (1981), the U.S. Supreme Court stated that the purpose of the Organized Crime Control Act of 1970 was to "seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new

remedies to deal with the unlawful activities of those engaged in organized crime.” 452 U.S. 576 at 588.

Counsel asserts that the applicant’s conviction is contrary to due process of law. There is no requirement that a foreign conviction must conform to U.S. Constitutional guarantees in order for it to be a conviction for immigration purposes. *Matter of Gutierrez*, 14 I&N Dec. 457, 458 (BIA 1973); *Matter of M--*, 9 I&N Dec. 132, 134 (BIA 1960). Thus, even though the applicant was convicted under the prior Italian system of “free conviction,” the applicant remains convicted for immigration purposes. Additionally, the penal certificate suggests that the applicant appealed his conviction to the Milan Court of Appeal in 2000 and, later, to the Supreme Court of Milan, and that it was not overturned.

Lastly, counsel cites *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), and asserts that to determine whether an offense is a “violent or dangerous crime” conduct must be “particularly grave.” However, we find no such basis to counsel’s claim that the applicant’s crimes are not “violent or dangerous crimes,” which is defined by 8 C.F.R. § 212.7(d).

The applicant in this case established exceptional and extremely unusual hardship to a qualifying family member for purposes of discretionary relief under section 212(h) of the Act. However, depending on the gravity of the alien’s underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act. We find that the gravity of the applicant’s criminal offense outweighs the showing of extraordinary circumstances in this case.

In general, when evaluating whether a waiver applicant warrants a favorable exercise of discretion, the Board has stated:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country’s immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien’s bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country’s Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien’s good character (e.g., affidavits from family, friends and responsible community representatives).

Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to

determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300. (Citations omitted).

Thus, we find that the favorable factors in the present case are the passage of 27 years since the applicant’s criminal conviction that rendered him inadmissible to the United States; his not having any other criminal convictions since 1983; his record of employment; and his family ties to the United States.

The adverse factor in the present case is the applicant’s conviction of conspiracy for corruption for an act contrary to official duties, violence and threat to public official, violence to oblige others to commit a crime, and robbery and private violence.

The adverse factor is the applicant’s conviction for a conspiracy involving corruption, violence and threatening a public official that renders him inadmissible to the United States. As we believe the record to show that the applicant’s conviction were not politically motivated, but the result of his involvement in organized criminal activities, we view his showing of extraordinary circumstances to be insufficient to warrant a favorable exercise of discretion. We find the favorable factors in the present case do not outweigh the adverse factor, such that a favorable exercise of discretion is not warranted.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

ORDER: The appeal is dismissed.