identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

[redacted]

Date: MAR 30 2012 Office: CHICAGO, IL FILE: [redacted]

IN RE: Applicant: [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 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(2)(D)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D)(ii), for having been convicted of crimes involving procurement of prostitution. The record indicates that the applicant has U.S. citizen parents. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The field office director found that the applicant had failed to establish the existence of a qualifying relative and the Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Field Office Director's Decision*, dated September 25, 2009.

On appeal, counsel asserts that the applicant is not inadmissible pursuant to section 212(a)(2)(D)(ii) of the Act, and even if he was, he is eligible for a section 212(h) waiver. *Brief in Support of Appeal*, dated November 20, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's parents' statements, the applicant's statements, financial records, statements from family members, letters of support, medical record and country conditions information on Ecuador. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted on March 21, 1995 of patronizing a prostitute under 720 ILCS 5/11-18, which stated at the time of the applicant's conviction:

> (a) Any person who performs any of the following acts with a person not his or her spouse commits the offense of patronizing a prostitute:
>
> (1) Engages in an act of sexual penetration as defined in Section 12-12 of this Code with a prostitute; or
>
> (2) Enters or remains in a place of prostitution with intent to engage in an act of sexual penetration as defined in Section 12-12 of this Code.

The record reflects that the applicant was convicted on October 21, 1999 of soliciting for a prostitute under former 720 ILCS 5/11-15, which stated at the time of the applicant's conviction:

> (a) Any person who performs any of the following acts commits soliciting for a prostitute:
>
> (1) Solicits another for the purpose of prostitution; or
>
> (2) Arranges or offers to arrange a meeting of persons for the purpose of prostitution; or

(3) Directs another to a place knowing such direction is for the purpose of prostitution.

Section 212(a)(2)(D) of the Act states in pertinent part, that:

Any alien who-

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution... is inadmissible.

Counsel cites *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008) in asserting that the applicant is not inadmissible under section 212(a)(2)(D)(ii) of the Act as neither of his crimes involved an attempt to procure a prostitute. The AAO notes that an application for admission or adjustment of status is considered a "continuing" application and "admissibility is determined on the basis of the facts and the law at the time the application is finally considered." *Matter of Alarcon*, 20 I.&N. Dec. 557, 562 (BIA 1992) (citations omitted). The date of the Form I-485 decision is the date of the final decision, which in this case, must await the AAO's finding regarding the applicant's waiver of inadmissibility.

Even if the AAO found the applicant to have procured a prostitute under the ruling in *Matter of Gonzalez-Zoquiapan*, more than ten years have passed since he committed his crimes. As such, he is not inadmissible under section 212(a)(2)(D)(ii) of the Act.

However, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing crimes involving moral turpitude. *See Matter of Lambert*, 11 I.&N. Dec. 340 (BIA 1965).

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –

(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 . . .

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 parents are the only 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-Moralez,* 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 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.

Counsel states that the applicant's father came to the United States in 1974; his and his spouse's six children reside in the United States; he suffers from dementia and hearing problems; he cannot read or write; the applicant's mother came to the United States in 1998; and the applicant's mother suffers from hip and knee problems and cannot walk without a cane.

Counsel states that annual income in Ecuador is $3,961; the applicant would likely be unable to find employment in construction; and all of the applicant's family left Ecuador to work and live in the United States.

The applicant's mother states that in 2008 she had a total hip arthroplasty and surgery on her right knee; she had had increasing pain in her left knee and the doctor thinks she will need surgery on it; she has arthritis; and her hearing problems are getting worse. The applicant's mother's medical records reflect that she had internal derangement of the right knee and she had knee surgery in 2009; she had a total hip arthroplasty in 2008 with excellent results; and she has had some knee and back pain her follow-up appointments.

The applicant's father states that he has high blood pressure and hearing problems; he has had brain trauma in the past; he could not get good medical care in Ecuador; Ecuador is a poor country; and there is not as much opportunity as there is in the United States. The record includes country conditions information reflecting that unemployment is a growing problem in Ecuador

The record reflects that the applicant's parents are elderly, their children are in the United States and his mother has medical issues. The record does not establish that she would have difficulty having her knee pain treated in Ecuador. The record does not include supporting documentary evidence of the applicant's father's claimed medical issues. The record does not include sufficient evidence that the applicant's parents would experience financial hardship in Ecuador or of the degree of emotional hardship they would experience. The record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that a qualifying relative would experience extreme hardship upon relocating to Ecuador.

Counsel states that the applicant's parents live with the applicant; the applicant supports his parents by paying for the mortgage, food and different utility bills; the applicant accompanies his parents to their doctor and physical therapy appointments; the applicant does not have a wife or children so he can meet his parents' needs; the other siblings have families to support; his father relies on the applicant to clarify what people are saying to him; the applicant's parents would be emotionally unable to be separated from their son; the applicant and his mother are extremely close due to his father's departure to the United States to find employment; and the applicant's mother relies on him to pay for her health insurance and living expenses. The record includes several bills for the applicant.

The applicant states that his mother had a total hip arthroplasty and surgery on her right knee; she cannot walk very well; he takes her for doctor appointments and physical therapy; his father has lost some memory and has hearing problems; and he pays for their food, health insurance, gas, electricity and phone bills.

The applicant's mother states that the applicant supports her and her spouse; their family eats together after attending Mass; she would be lonely without the applicant; her other children have families and cannot support her and her spouse; and she has been depressed and cries a lot.

The applicant's father state that he is close to the applicant; he has high blood pressure and hearing problems; he has had brain trauma in the past; and the applicant is his heart and soul and he would die if he left the country.

The record reflects that the applicant's parents are close to the applicant and he currently takes care of them. However, the record does not include sufficient documentary evidence that their other children cannot care for them. The record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he 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. *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.