



U.S. Citizenship
and Immigration
Services

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H2

DATE: NOV 01 2012 Office: HIALEAH, FL 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]
[REDACTED]
[REDACTED]
[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.

Thank you,

Mahal Shumway
for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hialeah, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States 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 a crime involving moral turpitude. The applicant's spouse is a U.S. citizen. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The field office director determined that the applicant had failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 25, 2011.

On appeal, counsel asserts that the denial is inconsistent with case law and constitutes an abuse of discretion. *Form I-290B*, received March 28, 2011.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, medical records, financial records and country conditions information on Peru. The entire record was reviewed and considered in rendering a 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.

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 November 3, 2003, the applicant was convicted of grand theft in the third degree in violation of Florida Statutes § 812.014(2)(c). The applicant received 18 months of probation and monetary penalties. As the applicant has not contested her inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(1), (B), . . . of subsection (a)(2) . . . 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

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 spouse is the only qualifying relative 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 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 spouse has been diagnosed with HIV; he receives private and public health coverage; his life would be in jeopardy if he does not receive the medication and medical attention necessary to manage his condition; he suffers from an allergic condition that places him at risk of death if he does not receive adequate medical attention; he has been admitted to the emergency room with severe swelling, difficulty breathing and decreased heart rate caused by the reaction; he carries a lifesaving injection in the event of another reaction; he has no family or support system in Peru; he has completed more than two years of college; his chances of finalizing his education in Peru are slim to none; he faces the possibility of unemployment in Peru; 44.5% of the population lives below the poverty line in Peru; and he is likely to live below the poverty line due to the employment issues in Peru. The applicant's spouse states that he would be unable to finish his

accounting education in Peru and he is concerned about access to medicine and medical services in Peru. The applicant's spouse states that he has a stable life in the United States; Peru does not have free health care and does not provide good insurance for someone with HIV; he receives medical insurance in the United States; his life would be at risk in Peru; he cannot rent his house as the rent would not cover his mortgage; and he would lose about \$30,000 if he sold his house.

The record includes documentation reflecting that the applicant's spouse is taking medication for HIV; his insurance is covering the majority of the cost of his medication; he met the eligibility requirements for state health HIV/AIDS benefits; and his state benefits include food bank services, medical nutritional therapy, outreach services, medical case management, and legal services. The record includes a prescription for epinephrine, which is used for treating severe allergic reactions.

The record includes a letter from a physician in Peru stating that truvada is not included in Peru's HIV program as the Ministry of Health of Peru is not able to provide it. The record includes an article detailing issues with healthcare for the poor in Peru.

The record includes country conditions information reflecting that underemployment in Peru in 2009 was 44.66% and the population below the poverty line in 2006 was 44.5%. The record includes a copy of a mortgage statement and warranty deed for the applicant's spouse.

The record reflects that the applicant's spouse is originally from Cuba. There is no indication that he has any ties to Peru. In addition, he has HIV and is receiving treatment for his condition in the United States with the use of his medical insurance and a state program. One of his medications is not included in Peru's HIV program. In addition, he has severe allergic reactions. The AAO notes the employment and poverty issues in Peru. The AAO also notes that it would be difficult for the applicant's spouse to finish his college degree in Peru. Considering the hardship factors mentioned, and the normal results of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship if he relocated to Peru.

Counsel states that the applicant's spouse is collecting unemployment; he loves the applicant; the applicant provides emotional and economic support to the family; her spouse requires constant medical attention and medication to manage his HIV; the applicant's support for her spouse is vital for his treatment; the applicant prepares her spouse's meals and the applicant's spouse relies on the applicant to cover his mortgage and living expenses; it would be impossible for him to finalize his education, pay for the mortgage and pay for the household expenses without the assistance of the applicant; and his house would be subject to foreclosure if he is unable to make his mortgage payments. The applicant's spouse details his affection for the applicant and states that he wants to have children with her. The record includes a 2010 Form 1099-G reflecting \$6,875 in unemployment compensation for the applicant's spouse and various financial obligations for the applicant's spouse, including a copy of a mortgage statement.

The record includes medical records which reflect that the applicant's spouse is taking medication for HIV; his insurance is covering the majority of the cost of his medication; he met the eligibility

requirements for state health HIV/AIDS benefits; and his state benefits include food bank services, medical nutritional therapy, outreach services, medical case management, and legal services.

The record reflects that the applicant's spouse has serious medical issues and he is close to the applicant. The record includes evidence of financial obligations for the applicant's spouse and that he is unemployed. The record reflects that the applicant is employed as a server. As such, the record indicates that the applicant's spouse depends on the applicant financially. Considering the hardship factors mentioned, and the normal results of separation, the AAO finds that the applicant's spouse would suffer extreme hardship if he remained in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of 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).

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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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).

The adverse factors in the present case are the applicant's crime, unauthorized period of stay and unauthorized employment.

The favorable factors include the presence of the applicant's U.S. citizen spouse, extreme hardship to his spouse and the lack of a criminal record in approximately nine years.

The AAO finds that the criminal and immigration violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case

outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained and the application will be approved.

ORDER: The appeal is sustained. The application is approved.