



U.S. Citizenship
and Immigration
Services

[REDACTED]

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DATE: 11/3/2012

OFFICE: NEWARK, NJ

FILE: [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 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,

Michael Shumway
for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia 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 is married to a U.S. citizen, the mother of U.S. citizen and Lawful Permanent Resident daughters and the stepmother of a U.S. citizen son. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that her inadmissibility would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated January 18, 2011.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship if the waiver application is denied. He also states that the applicant no longer has a criminal record as the charge that underlies the inadmissibility determination under section 212(a)(2)(A)(i)(I) of the Act has been dismissed. *Notice of Appeal or Motion*, dated January 29, 2011.

The record of evidence includes, but is not limited to: statements from the applicant's spouse and his former wife; medical documentation relating to the applicant; tax records for the applicant and her spouse; a 2008 letter of employment for the applicant's spouse; documentation of the applicant's and her spouse's financial obligations; bank statements; a school record for the applicant's stepson; and court records relating to the applicant. The entire record was reviewed and all relevant evidence considered in reaching 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 record reflects that on August 14, 2008, the applicant pled guilty to Third Degree Wrongful Impersonation, New Jersey Statutes Annotated (NJSA) 2C:21-17.a(1) and was admitted to the Somerset County (New Jersey) PreTrial Intervention (PTI) Program. She was placed under PTI Supervision for one year. On August 21, 2009, the Superior Court of New Jersey, Somerset County, dismissed the indictment against the applicant.

On appeal, the applicant's spouse questions whether an indictment that has been dismissed should bar the applicant's admission to the United States. He states that requiring the applicant to apply for a waiver is "borderline abusive . . . when the reasons for it seem questionable under the law."

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The record establishes that the applicant pled guilty to Wrongful Impersonation, NJSA 2C:21-17.a(1), and was placed in the Somerset County PTI Program for one year, during which time she was required to comply with the rules and conditions imposed by the program and her probation officer. Although the indictment against the applicant was ultimately dismissed, her guilty plea and her year of probation under the PTI Program meet the definition of conviction set forth in section 101(a)(48) of the Act. Accordingly, she has been convicted of Wrongful Impersonation, NJSA 2C:21-17.a, for immigration purposes.

The applicant does not dispute that this crime is crime involving moral turpitude. As the record does not show that determination to be erroneous, we will not disturb the finding that the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) 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)(I), (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 or child of the applicant. The qualifying relatives in the present case are the applicant’s spouse and children. Hardship to the applicant or other family members can be considered only to the extent that it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 BIA 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 BIA 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 BIA 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 BIA 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.

On appeal, counsel asserts that the applicant's daughter, ██████████ a Lawful Permanent Resident, would be negatively affected by the removal of her mother. The applicant's spouse in a January 29, 2011 statement also contends that USCIS should consider the impact of the applicant's removal on ██████████ who waited seven years to be reunited with her mother. He asserts that the impact on ██████████ would be shattering. No other claims regarding the hardships that would be created by separation are found in the record.¹

While the AAO acknowledges that the applicant's daughter would suffer emotional hardship if she were to be separated from her mother, the record provides no documentary evidence to establish the nature or severity of this hardship or the specific impacts on ██████████. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the AAO does not find the record to demonstrate that the applicant's daughter ██████████ would suffer extreme hardship if the waiver application is denied and she remains in the United States without her mother.

To establish that relocation to Colombia would result in extreme hardship for the applicant's spouse, counsel asserts that returning to Colombia would require the applicant's spouse to deprive his young U.S. citizen daughter, ██████████ of the healthcare and other amenities she has in the United States. He also asserts that if the applicant's spouse relocated, he would have to abandon his U.S. citizen son from a prior marriage, as well as his mother, brother and nephews, multiplying the detrimental effects of the applicant's removal.

In his January 29, 2011 statement, the applicant's spouse contends that USCIS has failed to consider the impact of relocation on ██████████ his U.S. citizen daughter. He states that drug cartel violence is pervasive in Colombia and in Cali, the city in which both the applicant and her spouse were born. The applicant's spouse further indicates that he and the applicant are both currently unemployed and, in the United States, can stay at home and care for their daughter. In Colombia, he asserts, they would have to find employment and rely on childcare facilities where standards are far lower than in the United States. The applicant's spouse also maintains that ██████████ needs regular medical care and is eligible for Medicare, but that in Colombia she would have no medical insurance as he and the applicant would not be able to afford it. The applicant further states that in Colombia, his daughter would not have the opportunities available to her in the United States.

With regard to his own hardships, the applicant's spouse asserts that he would have to start over again if he returned to Colombia since both he and the applicant have been gone so long. He states that they would both be unemployed and that they have no assets they could sell or savings to assist them in making the transition to a new life in Colombia. The applicant's spouse also contends that

¹ The AAO notes that in his January 29, 2011 statement, the applicant's spouse indicates that he is unemployed. However, he does not claim that he and the applicant are currently experiencing financial hardship or indicate that her removal would affect his financial circumstances.

returning to Colombia would separate him from his family members in the United States, including his U.S. citizen mother and brother. He further indicates that he would have to leave his son from his prior marriage behind, as it would be unreasonable to expect him to move to Colombia since he has lived in the United States since he was a one-year-old. The applicant's spouse states that he would be unable to pay child support to his ex-wife if he moved to Colombia.

In support of the preceding hardship claims, the record provides a January 29, 2011 statement from the applicant's spouse's ex-wife in which she states that the applicant continues to support their son. The record also includes a copy of the applicant's spouse's 2004 divorce agreement, which indicates that he and his ex-wife share custody of their son, but that primary residential custody lies with the child's mother. The AAO also notes that the applicant's spouse's concerns about conditions in Colombia, are supported by a U.S. Department of State travel warning, last updated on October 3, 2012. The travel warning advises U.S. citizens that terrorism and criminal activities remain a threat across Colombia.

While the record in the present matter does not support all of the hardship claims made by the applicant's spouse, the AAO nevertheless finds that, when considered in the aggregate, the applicant's separation from his son and other U.S. family members, the length of his residence in the United States, the risks presented by country conditions in Colombia and the normal difficulties and disruptions created by relocation establish that the applicant's spouse's return to Colombia would result in hardship that exceeds that normally created by relocation.

The AAO can, however, 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. 880, 886 (BIA 1994). 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. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated that her spouse would suffer hardship upon separation that exceeds the hardship that normally results from exclusion or removal, we cannot find that refusal of admission would result in extreme hardship to the applicant's spouse.

In that the record does not demonstrate extreme hardship to a qualifying relative, the applicant has not established eligibility for a waiver under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served by considering whether she 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.