



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **APR 08 2013**

OFFICE: SEOUL, SOUTH KOREA

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)

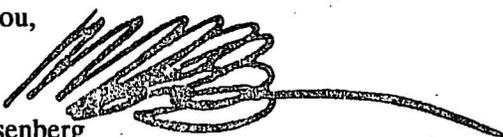
ON BEHALF OF APPLICANT:

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Korea 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 reside in the United States with his U.S. citizen spouse and children.

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 October 21, 2011.

On appeal counsel asserts that the applicant's spouse is suffering extreme hardship living separate from the applicant while raising two sons alone, and she has mental and physical illnesses due to the stress and anxiety of his case. *See Form I-290B, Notice of Appeal or Motion*, dated November 18, 2011.

The record contains, but is not limited to: Form I-290B; counsel's appeal letter and earlier correspondence; various immigration applications and petitions; hardship letters from the applicant's spouse; a letter from the applicant; letters from the applicant's father-in-law and brother-in-law; an OB/GYN's letter; a nurse practitioner's letter; a psychiatric report concerning the applicant; income tax and business-related records and photos; and documents related 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 in Korea on three occasions in 2008 and 2009. On August 8, 2008 the applicant was convicted of Assault/Injuring a Person for his conduct on July 19, 2008. He was fined 1,500,000 KRW. On February 17, 2009 the applicant was convicted of Assault and Resisting Arrest for his conduct on October 3, 2008. He was sentenced to six (6) months in jail, two (2) years of probation, and one hundred sixty (160) hours of community service. On August 4, 2009 the applicant was convicted of Assault for his conduct on May 10, 2009. He was fined 300,000 KRW. 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 a crime involving moral turpitude. The applicant does not contest his inadmissibility. He requires a waiver under section 212(h) 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

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 U.S. citizen spouse and children. Hardship to the applicant himself is not relevant under the statute and 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-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.

The record reflects that the applicant's spouse is a 32-year-old native of Korea and citizen of the United States who has been married to the applicant since December 2008. The couple has two young sons, [REDACTED] born April 19, 2009 and [REDACTED] born May 16, 2011. Counsel indicates that after residing in the United States since 1990, the applicant's spouse returned to Korea in about 2005 to care for her ailing mother who later passed away. There she met and married the applicant and explains that in 2011, she left him in Korea and returned to the United States to care for her widowed father and brother who were living alone with no woman and having trouble running the family's Japanese restaurant. The applicant's spouse writes that her stress is getting intense due to raising two young children and helping run the family business while separated from the applicant. She states that she often cannot eat or sleep because she is worrying about the applicant's case, finds herself crying all the time, receives psychological treatment to learn to manage depression and anxiety, has broken out in hives all over her body and is taking multiple medications. OB/GYN, [REDACTED] writes that the applicant's spouse has developed generalized urticaria, is being treated with multiple medications and that in his impression, the absence of the applicant contributes to the stress that leads to her outbreaks. [REDACTED] a psychiatric mental health nurse practitioner, writes that the applicant's spouse "has major depression, single episode, severe without psychotic symptoms" and generalized anxiety disorder. While Ms. [REDACTED] indicates that the applicant's spouse is "undergoing treatment," she does not identify or describe any such treatment or the effectiveness thereof, and does not indicate any diagnostic methods employed in reaching her diagnoses. Ms. [REDACTED] maintains that the symptoms are severe and have impacted the applicant's spouse's ability to function at "her previously high level of functioning," but offers no examples or corroboration. Ms. [REDACTED] asserts that the applicant's elder son, [REDACTED] "is profoundly affected by his father's continuing absence" and is exhibiting symptoms of childhood onset anxiety disorder, but does not describe any such affects or symptoms and does not indicate whether she has met or treated him. Ms. [REDACTED] states generally that the applicant's younger son, [REDACTED], is missing crucial bonding time with his father.

The applicant's father-in-law writes in an undated letter that he is nearly 60-years-old and simply wishes to live with his daughter, son-in-law and grandsons. He explains that he is diligently working so he can turn his restaurant over to the couple whose help he needs in running it. The applicant's brother-in-law writes that he would be happy if his sister, nephews and the applicant all lived with him and his father. The applicant's spouse states that she believes the applicant "will be a great help" to the business if he joins them in the United States. Counsel contends that if the waiver application is approved the applicant will help his father-in-law run the restaurant while his spouse works as a homemaker. While the family's desire to include the applicant in their business is acknowledged, there have been no assertions or evidence to suggest he has ever worked in or managed a restaurant or that his presence is essential to its continued operation or success. And while the applicant's brother currently operates the business with his father, his role in its future operation has not been addressed. Like her father, the applicant's spouse expresses that she wants only to live all together with her family members under one roof.

While the AAO recognizes that separation-related difficulties to the applicant's spouse and children are not insignificant, the evidence is insufficient to distinguish the challenges described from those ordinarily associated with the inadmissibility of a loved one. The AAO acknowledges that separation from the applicant has and may continue to cause various difficulties for the applicant's spouse and children. 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 if a waiver is not granted the applicant's spouse will be forced to choose between taking care of her aging father and raising her children without the applicant, or "leaving her father to fend for himself" so that her children can grow up with the applicant. Counsel omits that the applicant's spouse's brother resides with her father and works with him in the family business. In an earlier letter in support of a waiver, counsel indicated that most of the applicant's spouse's aunts and uncles also reside in the United States in Kentucky and Florida. The AAO notes that while difficult, the decision to relocate abroad almost always results in separation from family members in the United States, not unlike the applicant's spouse's decision to leave the applicant in Korea when she relocated to the United States to assist her father and brother. The applicant's spouse explains that her father and brother need her as she is the only woman in the family and she is used to keeping the house tidy and organized. She adds that they will feel very lonely if she and her sons return to Korea. It is noted that no specific assertions of relocation-related hardship to the applicant's children have been made. Counsel contends that if the applicant and her spouse are not permitted to take over the family business, the family will suffer great financial difficulties since a steady source of income will be lost. It is unclear whether counsel is suggesting that "great financial difficulties" will result from the loss of income the applicant's spouse has earned over the short time she has returned to the United States or if she is suggesting that the restaurant would close in the event the applicant is not admitted. In either scenario, corroborating documentary evidence has not been submitted for the record. 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)).

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's qualifying relatives including close family ties to the United States – particularly the applicant's spouse's ties to her widowed father and younger brother; the emotional and familial difficulties of separating herself and her young sons from them and being unable to care for and assist them on a day-to-day basis personally and in their family business; her 15-year residence in the United States prior to returning to Korea from 2005 to 2011; and the economic difficulties asserted by counsel. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse or children would suffer extreme hardship were they to relocate to Korea to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his spouse and children 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.