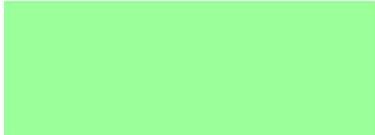


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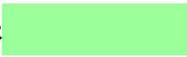
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

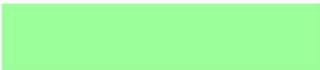


U.S. Citizenship
and Immigration
Services



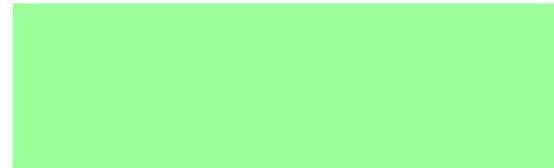
DATE: DEC 31 2013 Office: HIALEAH, FL

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h), 8 U.S.C. § 1182(h) of the Immigration and Nationality Act

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hialeah, Florida. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The waiver application was approved by the AAO on motion. It subsequently was denied by the AAO when it reconsidered its decision on a Service motion. The matter is now before the AAO on the applicant's motion to reopen. The motion will be approved and the application will be denied.

The applicant is a native and citizen of Honduras 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's two children are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Field Office Director*, dated February 24, 2010. The AAO found that the applicant did not establish extreme hardship to a qualifying relative and dismissed the appeal. *AAO Decision*, dated May 30, 2012. The AAO subsequently granted the applicant's motion to reconsider and found that he did not commit a crime involving moral turpitude; the waiver application therefore was unnecessary. *Second AAO Decision*, dated February 7, 2013. On February 15, 2013, the Eleventh Circuit Court of Appeals issued a published decision that appeared to contradict the AAO's finding. *See Cano v. U.S. Att'y Gen.*, 709 F.3d 1052 (11th Cir. 2013). The Field Office Director then filed a Service motion to reopen/reconsider based on the decision in *Cano*. The AAO, reconsidering its own decision pursuant to 8 C.F.R. § 103.5(a)(5), found that the applicant's conviction was for a crime involving moral turpitude and that he did not establish extreme hardship to his children, specifically if they were to relocate to Brazil. *Third AAO Decision*, dated July 17, 2013.

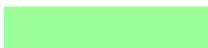
On motion to reopen, counsel asserts that Brazil is experiencing a wave of violence and is not a safe place for the applicant's children. *Form I-290B, Notice of Appeal of Motion (Form I-290B)*, filed August 20, 2013. Counsel submits updated country-conditions reports about Brazil in support of this motion.

The regulation at 8 C.F.R. § 103.5 provides in pertinent part that "a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Counsel has stated new facts in the motion which are supported by documentary evidence. The motion to reopen will be granted.

The entire record was reviewed and considered in rendering this decision.

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.)

In its July 17, 2013 decision, the AAO found the applicant's April 12, 2002 conviction for resisting an officer "by offering or doing violence" to his or her person, in violation of Florida Statutes § 843.01, to be a crime involving moral turpitude, based on the finding in *Cano* that a conviction under that statute is categorically a crime involving moral turpitude. The record reflects that the crime is a third-degree felony punishable by a maximum of five years imprisonment, and the applicant was placed on probation for two years and ordered to take an anger management course and pay court costs. The applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his conviction for a crime involving moral turpitude.

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

(h) The Attorney General [now Secretary of Homeland Security, "Secretary"] 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 [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 children are the 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-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.

The AAO previously found that the applicant established extreme hardship to his two children if they remained in the United States without him or if they relocated to Honduras. This finding will not be reconsidered in this decision. However, the AAO did not find extreme hardship to the applicant's two children if they relocated to Brazil, which is the applicant's spouse's country of birth. Therefore, the AAO will address only whether the evidence supports finding that the applicant's children would experience extreme hardship if they relocated to Brazil.

Previously, the applicant asserted that he would be unable to support his family in Brazil as he is an importer of Honduran produce and there is no demand in Brazil for Honduran produce. His spouse asserted that she earned an economics degree in Brazil but has never worked there or worked in the field of economics. Additionally, counsel previously asserted that the applicant's job prospects would be limited because he is not "professionally literate" in Portuguese, and he may be barred from living in Brazil due to his criminal history. The AAO found that the applicant did not demonstrate that his professional experience would be useless in Brazil, that his spouse could not find employment or that he would not be authorized to reside there permanently. Moreover, concerning their older child's medical condition, the AAO quoted a U.S. Department of State report that was generally positive about access to, and the quality of, healthcare in Brazil. *See U.S. Department of State Country Specific Information: Brazil*, dated April 12, 2013.

On motion, counsel asserts that "Brazil is experiencing a wave of extreme political and social violence, including labor unrest, violence against women, political protests and drug-related violence." She asserts that it is not a safe place for the applicant's U.S. citizen children. The record includes newspaper articles from June and July 2013 detailing the sometimes violent nature of protests and security issues in Brazil. The record also includes articles about recent clashes between protesters and police in Sao Paulo, Brazil and the sexual assaults of an American student and Brazilian woman in Brazil. Counsel also submits a copy of the U.S. Department of State's *Country Reports on Human Rights Practices for 2012* for Brazil.

The AAO acknowledges that the evidence reflects difficult security issues in some areas of Brazil and that the State Department has noted concerns about certain human-rights practices there. However, the applicant has not provided evidence to show where his children would reside in Brazil and whether conditions in that particular area would make it unsafe for them. Considering the previous findings of the AAO with the new evidence presented in the aggregate, the record lacks

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sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's children would experience extreme hardship if they relocated to Brazil.

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. Therefore, the AAO finds that no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted and the application remains denied.