



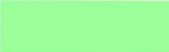
**U.S. Citizenship
and Immigration
Services**

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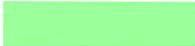


DATE: **MAR 08 2013**

OFFICE: LOS ANGELES, CA

File: 

IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v)

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Taiwan 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)(i)(I), for having been convicted of a crime involving moral turpitude, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v), in order to reside in the United States with his lawful permanent resident spouse and his adult U.S. citizen son and daughter.

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 accordingly. *See Decision of the Field Office Director*, dated June 23, 2010.

On appeal the applicant asserts that his wife and adult children will suffer extreme hardship if a waiver is not granted. *See Applicant's Letter in Support of Appeal*, dated July 15, 2010.

The record contains, but is not limited to: Form I-290B and the applicant's letter in support of the appeal; various immigration applications and petitions; declarations from the applicant, his spouse, his younger son, and his daughter; birth, marriage and household registration documents; employment, wage and tax documents for the applicant's younger son; documents related to the applicant's removal proceedings; 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 on July 25, 1997 of Possession of Property with a Serial Number Removed, in violation of California Penal Code (CPC) 537e (a)(3), a felony, for his conduct on or about April 4, 1997. The applicant was sentenced to three years of probation, 354 days in county jail (for which he received credit for 354 in custody – 236 days actual custody and 118 days good time/work time), and was ordered to pay restitution in the amount of \$400.

At the time of the applicant’s conviction, CPC § 537e (a)(3), stated in pertinent part:

(a) Any person who knowingly buys, sells, receives, disposes of, conceals, or has in his or her possession any personal property from which the manufacturer's serial number, identification number, electronic serial number, or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed, is guilty of a public offense, punishable as follows:

(3) If the property is an integrated computer chip or panel of a value of four hundred dollars (\$400) or more, by imprisonment in the state prison for 16 months, or 2 or 3 years or by imprisonment in a county jail not exceeding one year.

The California statute under which the applicant was convicted is divisible as it does not clearly apply only to conduct that involves moral turpitude, or conduct that does not. For example, selling altered property can be distinguished from merely possessing altered property. Therefore, the AAO cannot find that a violation of CPC § 537e (a)(3) is categorically a crime involving moral turpitude. As the statute is divisible, we will look to the record of conviction to determine under what part of the statute the applicant was convicted, and if the conviction was based on conduct involving moral turpitude. *Silva-Trevino*, 24 I&N Dec. 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. The record shows that the present applicant was convicted of possession alone and there is no indication of malicious intent. Moreover, it is noted that the applicant was not charged with receiving stolen property in violation of CPC § 496(a).

The AAO thus finds that the applicant’s conviction under California Penal Code § 537e(a)(3) does not constitute a conviction for a crime involving moral turpitude, the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and he does not require a waiver under section 212(h)

of the Act. The applicant remains inadmissible, however, under section 212(a)(9)(B)(i)(II) of the Act and requires a waiver under section 212(a)(9)(B)(v) of the Act.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record reflects that the applicant entered the United States in June 1991 and was admitted as a B1/B2 temporary visitor authorized to remain until December 1991. The applicant overstayed his visa and remained in the United States without authorization from January 1992 until November 1998 when he departed pursuant to an immigration judge's order granting voluntary departure in lieu of removal. The applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions under the Act, to August 4, 1998, the date of the immigration judge's voluntary departure order, a period in excess of one year. The applicant subsequently entered the United States on February 26, 2000 and was admitted as a B1/B2 visitor for a temporary period not to exceed six months.¹ He overstayed his status since August 25, 2000. As the applicant is seeking admission to the United States within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

¹ The AAO notes that while the applicant entered the United States and was admitted as a B1/B2 visitor in February 2000, the issuance of said visa in January 2000 raises questions as he was in removal proceedings a short time earlier and was granted voluntary departure in lieu of removal. A visa applicant is generally asked whether he has previously overstayed a U.S. visa and whether he has ever been removed from the United States or in removal proceedings. If the applicant concealed or misrepresented these facts on a visa application and/or during a visa interview, he is additionally inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or parent of the applicant. Hardship to the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's lawful permanent resident spouse is the only qualifying relative. 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 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 applicant’s spouse is a 62-year-old native and citizen of Taiwan and lawful permanent resident of the United States who has been married to the applicant since November 1971. The couple has three adult children, at least two of whom are U.S. citizens, to wit: a 35-year-old son, [REDACTED], and a 20-year-old daughter, [REDACTED]. The whereabouts and immigration status of another son, 39-year-old [REDACTED], are unclear from the record. The applicant’s spouse states that her sons, daughter and daughter-in-law all reside in the United States and if a waiver is not granted her family members would suffer extreme hardship as the applicant would be the only one separated from the family. She writes that she would suffer social disruption and the loss of family union but does not elaborate or provide further details concerning the anticipated hardship. Letters from the applicant, his younger son and daughter have also been submitted for the record. The three are nearly identical and express that the applicant’s conviction dates back to 1997, the family would suffer personally, culturally and socially in his absence, it would be extremely difficult for the applicant to find a job in Taiwan because his community ties are all in the United States, and he is financially responsible for his daughter’s college education which she would lose in his absence.

The record contains no documentary evidence demonstrating that the applicant contributes financially to his household or that he supports his daughter. 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 only financial documentation in the record concerns the applicant's younger son, [REDACTED] and includes evidence of his employment, wages, and income tax returns. It is noted that on said tax returns, the applicant's daughter, [REDACTED] is listed as a financial dependent of her brother, [REDACTED]. The evidence in the record is insufficient to establish significant economic loss to the applicant's spouse in the event of separation from the applicant. The AAO recognizes that the applicant and his spouse have been married for more than 40 years and that separation would naturally result in significant familial disruption and challenges. However, the evidence does not establish that the challenges described rise beyond those normally associated with separation due to a loved one's inadmissibility or removal.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that if the applicant is removed she would be forced to return to Taiwan to be with and take care of him. She writes that as a result of relocation, she will lose her permanent resident status in the United States which would be an extreme hardship to her. It is noted that the applicant's spouse has been a lawful permanent resident since December 2, 2009 and that no other assertions of relocation-related hardship have been made.

The AAO has considered cumulatively the only assertion of relocation-related hardship to the applicant's spouse which is the likely loss of her lawful permanent resident status were she to relocate to Taiwan throughout the applicant's 10-year period of inadmissibility. While not insignificant, considered in the aggregate the AAO finds the evidence insufficient to demonstrate that the applicant's lawful permanent resident spouse would suffer extreme hardship were she to relocate to Taiwan.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces 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(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. 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.