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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **MAY 22 2013**

Office: LONDON

FILE: [REDACTED]

IN RE: [REDACTED]

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

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, London, United Kingdom, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of India and citizen of the United Kingdom who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime involving moral turpitude. 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 with her U.S. lawful permanent resident mother.

On December 19, 2011, the District Director denied the application for a waiver (Form I-601), finding that the applicant failed to establish extreme hardship to a qualifying relative. The District Director also noted that the application would be denied as a matter of discretion.

On appeal, counsel for the applicant asserts that the waiver application should have been approved as a result of extreme hardship to the applicant's mother. Counsel does not contest the applicant's inadmissibility on appeal.

In support of the waiver application, the record includes, but is not limited to: a legal brief from counsel; a statement from the applicant's mother; medical and psychological records for the applicant's mother; limited phone records for the applicant's mother; limited financial documentation for the applicant's mother; biographical information for the applicant and her mother; and documentation in connection with the applicant's criminal convictions and immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

We will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing a crime involving moral turpitude.

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 . . . 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 [REDACTED] in the United Kingdom, the applicant was convicted of Using False Information for Other than Prescription for Schedule Drug, presumably in violation of the United Kingdom's Forgery and Counterfeiting Act of 1981, Part I, Section 3. The application was given conditional discharge for 12 months.

The Forgery and Counterfeiting Act 1981, Part I, Section 3 states that:

The offence of using a false instrument.

It is an offence for a person to use an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

The Board has held that where fraud is inherent in an offense, it is not necessary that the statute prohibiting it include the usual phraseology concerning fraud in order for it to involve moral turpitude. *Matter of Flores*, 17 I&N Dec. 225, 228 (BIA 1980) (citing *Matter of R--*, 5 I & N Dec. 29 (BIA 1952; A.G.1952; BIA 1953); see also *Matter of Martinez*, 16 I & N. Dec. 336 (BIA 1977); *Matter of B--*, 7 I & N Dec. 342 (BIA 1956); *Matter of D--*, 2 I & N. Dec. 836 (BIA 1947); *Matter of M--*, 1 I & N. Dec. 619 (BIA 1943); but see *Matter of Lethbridge*, 11 I & N. Dec. 444 (BIA 1965); *Matter of G--*, 7 I & N. Dec. 114 (BIA 1956)). Thus, the Board has found that where fraud is inherent in an offense, it is not necessary for the statute to expressly require intent to defraud as an element of the crime. See also *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992). In consideration of the foregoing, we find that fraud is inherent in the applicant's crime. The applicant's conviction in the United Kingdom under the Forgery and Counterfeiting Act 1981, Part I, Section 3 constitutes a crime involving moral turpitude, rendering her inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not challenge her inadmissibility on appeal.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act, which provides, in pertinent parts:

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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; or

...

Since the activities that are the basis for the applicant's criminal conviction occurred less than 15 years ago, she is only eligible to apply for a waiver under section 212(h)(1)(B) of the Act, which is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in this case are the applicant's U.S. lawful permanent resident mother. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 deportation, 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, 885 (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 1292, 1293 (9th Cir. 1998) (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 U.S. lawful permanent resident mother is suffering extreme hardship as a result from separation from the applicant. The AAO notes that the applicant's mother is a 70-year-old native of India who the record indicates does not speak English. Counsel states that the waiver application “should have been approved as [the applicant's mother] suffers from severe health conditions.” The applicant's mother in her declaration in the record, states that she “feels deeply compelled each day to be with [the applicant].” She states that the applicant's immigration situation has caused her emotional stress that affects her physical well-being, as she does not want to be forced to choose between her children. It is not clear from the record the last time that the applicant's mother was in physical contact with the applicant. Vonage phone records from January

2011 indicate phone activity between a number in Kansas to an unidentifiable number an average of 6 times per day for a period of 7 days; however, we cannot draw any significant conclusion regarding contact between the applicant and her mother from such limited information.

A letter dated August 5, 2010 from [REDACTED] in Hays, Kansas states that the applicant's mother "recently underwent a right knee replacement." He also states that the applicant's mother's medical history includes "diabetes, hypertension, and depression." Additionally, copies of lab reports and doctor's notes from years preceding 2010 were submitted. The record; however, does not contain more recent documentation regarding the applicant's mother physical health from a health care professional.

Counsel and the applicant's mother state that the applicant's mother is torn between choosing between her children. As result, counsel states that the applicants' mother feels "helpless and overwhelmed by the circumstances," resulting in insomnia, depression, weight fluctuations, forgetfulness, and crying spells, among other problems. In regards to the applicant's mother's psychological health, the most recent report in the record is dated February 14, 2012 and was conducted by [REDACTED] of San Diego, California. It is not clear whether the applicant's mother met in person with [REDACTED] or whether the evaluation was conducted over the phone as the AAO notes that the applicant's mother resides in Kansas and stated in her affidavit that travel is painful for her. [REDACTED] concludes that the applicant's mother's "mental/physical conditions are exacerbated by the fact that her daughter is away from her in England" and that she will suffer "on-going extreme hardships" if the applicant is not admitted to the United States. [REDACTED] also states that the applicant "is capable of coming to the US and taking care of [the applicant's mother] as she has the time, energy, focus and skills to do so." Although the AAO respects the opinion of medical professionals, [REDACTED] evaluation does not explain why the applicant's mother is unable to obtain assistance from her children who reside in the United States. Additionally, there is no documentation in the record to support the conclusion that the applicant "has the time, energy, focus and skills" to take care of her mother. Moreover, the medical records submitted do not indicate what care, if any, that the applicant's mother needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. Although the AAO notes that the applicant's mother would likely endure emotional hardship as a result of long-term separation from the applicant, the record does not establish that the hardship she would face, considered in the aggregate with the other hardships raised, rise to the level of "extreme."

Counsel also states that the applicant's U.S. lawful permanent resident mother would face extreme hardship if she were to relocate to the United Kingdom to reside with the applicant. In particular, counsel states that the applicant's mother would suffer financial, emotional, and physical hardship upon relocation. In regards to financial hardship, counsel states that the applicant's mother would no longer be able to rely on her "SSI payments" were she to relocate to the United Kingdom. No documentation was submitted to show what type of social security payments the applicant's mother receives and that those payments are unavailable to her should she relocate abroad. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record also fails to establish that the applicant and/or her husband would be unable to support the applicant's mother in the United Kingdom. There is no information in the record documenting the applicant and her husband's employment and financial situation in the United Kingdom. Additionally, although counsel and the applicant's mother state that the applicant relies on Medicaid in the United States, there is no documentation in the record regarding the applicant's mother's Medicaid coverage nor is there any documentation to illustrate that she would not be eligible for health care coverage in the United Kingdom.

In regards to the applicant's mother's emotional hardship if she were to relocate, counsel states that the applicant's mother has "deeply rooted ties with her family and within her community." The psychological evaluations in the record; however, indicate that the applicant's mother's "only immediate outlet is her immediate family." In regards to the applicant's mother's family ties in the United States, she indicates that she has two sons, one daughter, and seven grandchildren. The record does not contain statements from any of those individuals. Although the record suggests that the applicant's mother resides with one of her children in Kansas and that another child who resides in California served as a co-sponsor to the applicant on her immigrant visa application, there is no documentation in the record to document the degree of emotional hardship the applicant's mother would experience if she were to be separated from those individuals. The AAO notes the applicant's mother's statement that her health and financial situation would prevent her from being able to travel to and from the United Kingdom. However, there is no documentation in the record to support that assertion. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's mother relocate to the United Kingdom, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's qualifying relative's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility 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.