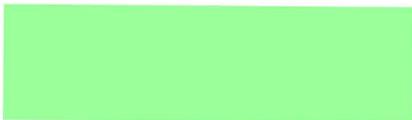


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U.S. Citizenship
and Immigration
Services



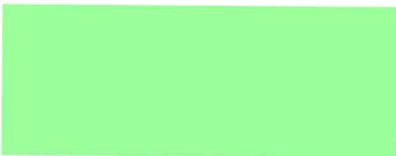
DATE: **OCT 01 2013** Office: ST. PAUL, MINNESOTA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 (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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant is a native and citizen of Mexico 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 been convicted of 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 remain in the United States with his U.S. citizen spouse and two children, born in 2000 and 2004.

The Field Office Director concluded that the applicant had not demonstrated that the bar to his admission would result in extreme hardship to his qualifying relatives, as required under section 212(h) of the Act, and denied his Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated June 23, 2011.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO*, dated April 5, 2013.

On motion, counsel submits the following: a brief; a letter from the applicant's spouse; support letters; and financial documentation. The AAO notes that in the aforementioned brief, counsel states that "most significant with this filing is medical records for Ms. [redacted] [the applicant's spouse] detailing her medical condition..." *See Brief in Support of Motion*, dated April 26, 2013. Despite counsel's assertion to the contrary, medical records were not provided with the instant motion, nor are they referenced by counsel in the index of exhibits he submits with the instant motion. The entire record was reviewed and considered in arriving at a decision on the motion.

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-

(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).

On March 1, 2010, the applicant pled guilty to Felony Forgery-Use False Writing-Identification-Social Security Number (Count One) in violation of sections 609.63 subd.1(1) and 609.652 subd.3 of the Minnesota Statutes Annotated (M.S.A.) and Gross Misdemeanor Identity Theft (Count four) under sections M.S.A. §§ 609.527 subds.2 and 3(1). On April 6, 2010, the applicant was sentenced to one year of probation on the forgery conviction (Count One) and 90 days imprisonment on the identity theft conviction (Count Four), of which 75 days were stayed. Based on the applicant's conviction for forgery and identity theft, the field office director determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act of the Act, for having been convicted of a crime involving moral turpitude. The AAO did not disturb that determination on appeal. *Supra* at 3.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 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 of Immigration Appeals (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 v. INS*, 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.

With respect to remaining in the United States while the applicant relocates abroad due to his inadmissibility, on appeal the AAO evaluated the psychosocial evaluation provided and raised numerous concerns with respect to the findings provided by Dr. [REDACTED] in August 2011. Concerns included: the lack of supporting evidence establishing that the applicant’s spouse or children would experience extreme hardship were the applicant to relocate abroad; failure to establish the applicant’s sons’ ability to handle separation from their father; and inadequate documentation establishing that the applicant would be in danger in Mexico, thereby causing fear and anxiety for his wife in the United States. *Supra* at 4-6. On motion, submitted almost two years after Dr. [REDACTED] prepared the above-referenced evaluation, counsel has failed to address the concerns raised by the AAO. The applicant has thus not established that the emotional hardship the applicant’s spouse or children would experience if they remained in the United States without the applicant are beyond the hardships normally resulting from long-term separation from a spouse or father.

As for the financial hardship referenced, on motion the applicant’s spouse contends that she is not working at this time as a result of a right hand injury in 2008. She asserts that she needs her husband’s financial contributions to ensure that all the bills are paid. See *Letter from [REDACTED]* dated April 23, 2013. As noted by the AAO when it dismissed the appeal, no medical documentation has been provided corroborating the applicant’s spouse’s injury and establishing that said injury has limited her in any capacity. Further, although documentation has been provided establishing the applicant’s employment, no documentation has been provided on motion regarding the applicant’s spouse’s expenses, assets and liabilities to establish that the applicant’s spouse would experience financial hardship were her husband to relocate abroad. The AAO notes that the applicant’s spouse references that they have a home paid off and “we also have apartments and a lot paid off.” *Supra* at 1. It has not been established that the applicant’s spouse is unable to sell some

of her properties should the need arise. Moreover, documentation submitted with the motion in April 2013 indicates that, as of April 19, 2013, the applicant's spouse was in fact employed, having earned \$4640 year to date. Finally, although numerous references are made regarding the lack of gainful employment opportunities in Mexico, 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)).

On motion, the AAO finds that it has not been established that the applicant's U.S. citizen spouse and sons would experience extreme hardship as a result of separation from the applicant. The applicant has not shown the hardship they would suffer, considered in the aggregate, constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

In regards to relocating abroad, in the AAO's decision to dismiss the appeal the AAO noted that the record contained no supporting evidence establishing the applicant's spouse's family ties in the United States and what specific role, if any, they played in her and her son's lives. Further, the AAO referenced that no documentation had been provided establishing what, if any, restrictions, the applicant's spouse had in regards to her asserted disability. Further, the record lacked any background materials to substantiate the applicant's claim regarding employment opportunities and financial hardships in Mexico. In addition, the AAO noted that no documentation had been provided establishing that the applicant's spouse or her sons would not be able to obtain adequate healthcare. Moreover, no documentation had been provided establishing that the applicant's spouse or sons would be in danger were they to relocate abroad. Finally, with respect to the referenced hardships the applicant's sons would experience abroad, the AAO noted the children's young ages; the relative adaptability that comes with their youth; their proficiency in both the English and Spanish languages as reported to Dr. [REDACTED] their apparent overall good physical and mental functioning; and the close ties they have with their parents, all of which are strong indications of successful transition should they relocate to Mexico. *Supra* at 7-8.

On motion, the applicant's spouse has provided a statement, noting the problematic economy in Mexico, the lack of academic opportunities for her children in Mexico, and the inability of her children to adapt to life in Mexico. *Supra* at 1. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. The AAO acknowledges that relocation to Mexico may very well result in some hardship to the applicant's spouse and children. However, after carefully reviewing the record, we are unable to conclude that the hardships to the applicant's wife and children upon relocation, even when considered in the aggregate, rise to the level of extreme hardship.

On motion, the record, reviewed in its entirety, does not support a finding that the applicant's spouse or children will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or parent is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's or children's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's

(b)(6)

NON-PRECEDENT DECISION

Page 6

and children's situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law.

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. The prior decision of the AAO is affirmed.