



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 03 2013**

Office: HIALEAH

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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, Hialeah, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uruguay 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 his U.S. citizen parents.

On June 12, 2013, the Field Office Director denied the application for a waiver (Form I-601), finding that the applicant failed to establish extreme hardship to a qualifying relative.

On appeal, counsel for the applicant asserts that the evidence demonstrates that the applicant's qualifying relatives will suffer from extreme hardship as a result of the applicant's inadmissibility.

In support of the waiver application, the record includes, but is not limited to: a legal brief from counsel; letters from the applicant's parents; biographical information for the applicant's parents; documentation related to the applicant's health; a statement from the applicant; a letter from the applicant's brother; country conditions information on Uruguay; and documentation in connection with the applicant's criminal 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.

The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of multiple crimes 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 (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.)

The record indicates that on July 11, 2001 in the U.S. District Court for the Southern District of Florida the applicant was convicted of Conspiracy to Traffic in or Use Unauthorized Access Devices and Possession of Unauthorized Device-Making Equipment in violation of 18 U.S.C. § 1029(b)(2). The applicant was sentenced to time served and was placed on supervised release for a period of 2 years. The applicant was also ordered to pay \$39,999 in restitution. The record indicates the activities for which the applicant was convicted occurred between on or about June 26, 2000 and on or about December 28, 2000. Fraud is a crime involving moral turpitude (CIMT), and any crime involving fraud is a CIMT. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), *cert. denied*, 383 U.S. 915 (1966). Further, conspiracy is a CIMT where the objective of the conspiracy is a CIMT. *See Jordan v. De George*, 341 U.S. 223 (1951); *see also Omagah v. Ashcroft*, 288 F.3d 254 (5th Cir. 2002), *Matter of Short*, Interim Decision 3125 (BIA 1989). As the applicant has not contested inadmissibility on appeal, and the record does not show the Field Office Director's determination to be in error, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A) of the Act as the result of his conviction.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

(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 . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

As 15 years have not passed since the occurrence of the activities for which the applicant is inadmissible, the applicant must seek a waiver of inadmissibility under section 212(h)(1)(B) of the Act, which is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawful permanent 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 U.S. parents are the only 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 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.

On appeal, counsel for the applicant states that the applicant’s U.S. citizen parents will suffer extreme hardship as a result of separation from the applicant. The record indicates that the applicant’s parents are not married to each other and do not live together. The applicant’s mother is 61 years old and according to the Form I-601 resides in [REDACTED] Florida. The applicant’s father is 69 years old and according to the Form I-601 resides in [REDACTED] Florida at the same address on record for the applicant. The hardship to each of the applicant’s parents will be analyzed individually, in the aggregate for each individual. Counsel, however, states that the hardship that each of the applicant’s parents will suffer emotional and financial hardship if they were to be separated from the applicant. Counsel states that the both of the applicant’s parents would worry about the applicant’s mental health were he to reside in Uruguay. The record indicates that the applicant suffers from bi-polar disorder, and has been receiving treatment for the disorder since he was a teenager. A letter from [REDACTED] PhDc, [REDACTED] a psychiatric nurse therapist, dated August 28, 2012, states that the applicant is in full remission and has remained compliant with medication and treatment recommendations. Ms. [REDACTED] states that the applicant has “successfully managed his mental illness, demonstrates successful and progressive employment, as well as contributing to the care of his elderly parents.” She also states that he participates in the care of his niece. Although she states that social and therapeutic support are critical for the applicant, she believes “he will continue to be responsible and successful where ever he is in the future.” She further states that there is a risk of decompensation “should his residential status change” and notes in one sentence, without explanation, that she also believes “the mental and physical health of his parents will be affected.”

There is no further documentation in the record concerning the applicant's parents' mental or physical health. Nor is there any documentation in the record that the applicant would be unable to obtain mental health care in Uruguay. The mental health of the applicant can only be taken into consideration to the extent that it is shown to affect the hardship to his qualifying relatives, who in this case are his parents. The AAO notes that although the applicant's parents' assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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).

Moreover, there is no documentation in the record that the applicant's parents rely on the applicant for financial support. The record does not contain documentation concerning the applicant's parents' income, expenses, or any contributions that the applicant makes to their financial well-being. Furthermore, the record indicates that the applicant's older brother is a U.S. citizen and was the financial co-sponsor for his application for adjustment of status. The record does not indicate why the applicant's brother would be unable to provide financial support to the applicant's parents in his absence. Although the applicant's parents would likely endure some hardship as a result of long-term separation from the applicant, the record does not establish that the hardships either one would face, each considered in the aggregate, rise to the level of "extreme."

Counsel also states that the applicant's parents would face extreme hardship if they were to relocate to their native Uruguay. The record indicates that both of the applicant's parents became U.S. citizens over a decade ago and apparently have resided in the United States since 1986, yet there is no documentation in the record of their ties here, aside from their relationship to the applicant and his older brother. Additionally, counsel states that both of the applicant's parents rely on "SSI" benefits that they would not be able to obtain were they to relocate to Uruguay. There is no support for that statement in the record. Again, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 33 n.2; and *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Counsel also states that the applicant's parents' advanced age and health issues prevent them from relocating. Again, there is no documentation in the record of health issues suffered by either of the applicant's parents. It is the applicant's burden of proof in these proceedings. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should either of the applicant's parents relocate to Uruguay, 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 relatives' concerns over the applicant's immigration status are 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 relatives, each considered in the aggregate, rise 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 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 appeal is dismissed.