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



U.S. Citizenship
and Immigration
Services

[Redacted]
Date: **JUN 10 2014** Office: DALLAS, TEXAS

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality 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,

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

The applicant is a native and citizen of Mexico 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)(A)(i)(I), for having been convicted of a crime involving moral turpitude (CIMT). The applicant is the son of Lawful Permanent Residents and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his parents.

The Field Office Director concluded that the applicant had significant adverse factors which outweighed any positive factors and denied the Application for Waiver of Grounds of Excludability (Form I-601) as a matter of discretion.

On appeal, counsel for the applicant requests that the applicant's waiver be reconsidered.

In support of the applicant's claim, the record includes, but is not limited to, criminal records for the applicant; statements from the applicant; statements from friends and family members of the applicant; copies of medical records related to the applicant's parents; pay stubs for the applicant; copies of monthly financial obligations for the applicant's parents; and country conditions materials for Mexico. The entire record was considered in rendering a decision on the appeal.

Section 212(a)(2)(A)(i) of the Act states, in pertinent part:

(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) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) . . . is inadmissible.

The record reflects that on March 5, 2012, the applicant pled guilty to Fraudulent Use/Possession of Identity Information, a felony, in [REDACTED] Texas, Criminal District Number [REDACTED] in violation of Texas Penal Code Section 32.51(C)(1). He was sentenced to four years of deferred adjudication and fined. The record contains a Deferred Adjudication Order, a part of the record of conviction, finding the applicant was guilty of violating § 32.51 under subsection (b)(1), with the intent to harm or defraud another by obtaining, possessing or using an item with identifying information without the person's consent, and referencing subsection (a)(1)(C), which defines "identifying information" as a unique electronic identification number, address, routing code, or financial institution account number.

Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that “[w]hatever else the phrase ‘crime involving moral turpitude’ may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 U.S. 223, 232 (1951).

Crimes that include as a requirement an intent to defraud have been held to involve moral turpitude. *Matter of Adetiba*, 20 I&N Dec. 506, 512 (BIA 1992). In *Matter of Flores*, the Board also held that uttering and selling false or counterfeit paper related to the registry of aliens was a crime involving moral turpitude, even though intent to defraud was not an explicit statutory element. 17 I&N Dec. 225, 230 (BIA 1980). The Board explained 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.” *Id.* at 228; *see also Matter of R--*, 5 I&N Dec. 29 (BIA 1952; A.G. 1952; BIA 1953); *Matter of Kochlani*, 24 I&N Dec. 128, 130-131 (BIA 2007) (“[C]ertain crimes are inherently fraudulent and involve moral turpitude even though they can be committed without a specific intent to defraud.”)

The intent to harm or defraud is an element of the crime for which the defendant was convicted. As such, the record supports the conclusion that the applicant is inadmissible under section 212(a)(2)(A)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(I), for having committed a crime involving moral turpitude.

The record also contains a second Deferred Adjudication Order establishing that the applicant pled guilty to Possession of Drug Paraphernalia on April 20, 2011, in [REDACTED] Texas, County Criminal Court Number [REDACTED]

In *Matter of Martinez-Espinoza*, the Board found that possession of drug paraphernalia in violation of section 152.092 of the Minnesota Statutes was a crime relating to a controlled substance. 25 I&N Dec. 118, 120 (BIA 2009). The Board noted that the phrase “relating to” has a broad meaning and concluded that “a law prohibiting the possession of an item intentionally used for manufacturing, using, testing, or enhancing the effect of a controlled substance necessarily pertains to a controlled substance.” *Id.* Therefore, the Board held that possession of “a pipe for smoking marijuana is a crime within the scope of [section 212(a)(2)(A)(i)(II)] because drug paraphernalia relates to the drug with which it is used.” *Id.* (quoting *Escobar Barraza v. Mukasey*, 519 F.3d 388, 391 (7th Cir. 2008).

Therefore, the applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a violation of a law relating to a controlled substance. The record does not indicate that his conviction relates to more than a single offense of simple possession of 30 grams or less of marijuana, so he is eligible for a waiver of that ground of inadmissibility.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . 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

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 an applicant or their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father and mother 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-Moralez*, 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 applicant has submitted a letter which outlines the hardships his qualifying relatives would experience if he were removed to Mexico. The applicant explains that if he were removed his parents and sisters would suffer extreme hardship. He states that he was brought to the United States as a child and has no family ties to Mexico. He states that he sometimes picks up his younger sister from school to help his mother out when she's working, and that she would have to quit her job if he left. He further states that he would not be able to get a job in Mexico and that even if he did, he would not be able to afford to live there and that his parents would be unable to send him money. He explains that his older sister would have to stop going to college to help his parents out and that his third sister, a senior in high school, wants to go to college and would have to give up on her

dream in order to help her parents out if he left. All of this, he indicates, would put a financial, physical and emotional burden on his parents if he were denied admission.

The record contains an affidavit from the applicant's father which states that he would worry about the applicant relocating to Mexico because he would have no place to live, no job and no family ties to assist him. He states that the applicant sometimes assists his wife with picking up their youngest daughter, and that their older daughters would have to forego college classes in order to assist them if the applicant was removed.

The record contains an affidavit from the applicant's mother stating that if the applicant had to return to Mexico she would be very worried because he has few family ties there. She worries that he would end up on the street and be an easy target for gangs in the country. She also states that the applicant helps her walk her youngest daughter home from school and that she would have to quit her part-time job if the applicant were not in the United States to assist her.

The record contains a Patient Recommendations printout for the applicant's mother indicating that she has been prescribed Paroxetine for depression, and a background document on the medication Paroxetine. The record also contains country conditions materials and background articles on the drug-violence raging in Mexico. The record contains other statements from family members of the applicant discussing hardship that would arise if the applicant were removed. Based on the evidence discussed above, the record indicates that the applicant's parents would experience some emotional hardship due to separation from the applicant.

The record contains copies of pay stubs and tax returns for the applicant's parents, as well as copies of utility bills and invoices for their residence. While these documents are informative, they fail to establish that the applicant's parents would experience financial hardship due to the applicant's departure because it is not clear that they would be unable to meet their financial obligations. Nor do these documents demonstrate that the applicant has been supporting his parents financially. The applicant's father states in a letter that his other children "might not be able to keep attending school," however, because it is not clear that the applicant has been providing any financial support for his parents, or that his parents would be unable to meet their own financial obligations, it is not clear why his daughters would have quit school to support the family.

The record reflects that the applicant's parents may experience some physical and emotional hardship due to separation if the applicant is removed, however, when the hardships upon separation are examined in the aggregate, the record fails to establish that the hardships to the applicant's parents would rise above those commonly experienced by the relatives of inadmissible aliens to a degree of extreme hardship

With regard to hardship upon relocation, the applicant's father has submitted a statement in which he asserts it would be a great hardship for him if the applicant had to return to Mexico, a country he did not know. The father explains that, as a lawful permanent resident, he would be unable to return to Mexico with the applicant because he would lose his own status and because he would have to continue providing for his own family in the United States.

The record contains country conditions materials which detail the socio-economic conditions in Mexico and highlight the drug-related violence occurring there. The record further contains copies of medical records related to the applicant's mother. Having to relocate to Mexico and disrupt the continuity of medical care would be an additional hardship factor to consider upon relocation.

When the physical and financial hardships on the applicant's parents are considered in the aggregate, the record establishes that they would experience impacts rising to the degree of extreme hardship if they were to relocate to Mexico.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

In proceedings for an application for waiver of grounds of inadmissibility under section 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.

ORDER: The appeal is dismissed.