



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-E-R-

DATE: DEC. 1, 2015

APPEAL OF SAN FERNANDO VALLEY FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Argentina, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, San Fernando Valley Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude.

The Director denied the Form I-601, finding the evidence insufficient to establish extreme hardship to a qualifying relative.

On appeal, the Applicant asserts that his spouse would suffer extreme hardship if the application is denied.

The record includes, but is not limited to: identity and relationship documents, arrest and court records, financial documents, a photograph, statements from the Applicant and his spouse, and letters relating to the Applicant's good moral character and relationship with his spouse. The entire record was reviewed and considered in rendering this decision.

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)

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

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[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 shows that the Applicant was arrested on [REDACTED], 2001, and on [REDACTED] 2001 the Applicant was convicted of one count of grand theft in the third degree, in violation of Fla. Stat. § 812.014(2)(c); and one count of uttering a forged instrument in violation of Fla. Stat. § 831.02. The record reveals that the Applicant was arrested on [REDACTED] 2001, and on [REDACTED] 2001 he was convicted on one count of grand theft in the 3rd degree in violation of Fla. Stat. § 812.014(2)(c); and five counts of cashing or depositing items with intent to defraud, in violation of Fla. Stat. § 832.05(3)(a).

On [REDACTED] 2001, he was sentenced to serve five years of probation, fined, ordered to pay restitution, and ordered to perform community service.

At the time of the Applicant's conviction, Fla. Stat. § 812.014 stated:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

At the time of the Applicant's conviction, Fla. Stat. § 812.014(2)(c) read:

It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at \$300 or more, but less than \$5,000.
2. Valued at \$5,000 or more, but less than \$10,000.
3. Valued at \$10,000 or more, but less than \$20,000.

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At the time of the Applicant's conviction, Fla. Stat. § 831.02 provided that:

Uttering forged instruments

Whoever utters and publishes as true a false, forged or altered record, deed, instrument or other writing mentioned in s. 831.01 knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

At the time of the Applicant's conviction, Fla. Stat. § 832.05(3)(a) read:

It is unlawful for any person, by act or common scheme, to cash or deposit any item...in any bank or depository with intent to defraud.

As the Applicant has not contested his inadmissibility and the record does not show that determination to be in error, we will not disturb the Director's determination that the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his convictions of crimes involving moral turpitude as discussed above.¹

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

The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 if –

- (1) (A) in the case of any immigrant it is established to the satisfaction of the [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

¹ We also note that the Applicant was convicted of one count of unlawful use of license, in violation of Fla. Stat. § 322.212(1), on [redacted] 2001. As the Applicant is inadmissible for the crimes discussed above, we will not address whether this crime is a crime involving moral turpitude.

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(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 [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 . . .

We note that the activities for which the Applicant is inadmissible occurred between [REDACTED] 2000 and [REDACTED] 2001, less than 15 years prior to his application to adjust status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992) (citations omitted). As such, he is not eligible for a waiver under section 212(h)(1)(A) of the Act.

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-Morales*, 21 I&N Dec. 296 (BIA 1996). The Applicant's U.S. citizen spouse is his qualifying relative.

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 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.

We will first address hardship if the Applicant’s spouse relocates to Argentina with the Applicant. The Applicant’s spouse asserts that she would experience emotional and financial hardship if she relocates. The Applicant’s spouse states that she was born in this country and has lived her entire life here. She states that her family and friends reside here and that her mother is dependent upon her for help. She says that she would be unable to help her mother if she relocates; her mother has suffered from depression since her father’s death; her mother does not want to take her medication, has appetite loss, and sleeps all day; she provides special care to her mother; her mother states that she feels alone; and she is concerned that her mother would die without her. She is concerned because she is unfamiliar with the culture of Argentina and she has no family or ties there. She also states that the Applicant has been in the United States for 26 years and he does not have any family ties in Argentina.

She says she does not speak Spanish fluently and that would affect her ability to find employment. The Applicant states that it would be difficult to obtain employment in Argentina due to his age. The Applicant’s spouse mentions that she began psychological treatment in 2009; and she is undergoing therapy every month.

The record reflects that the Applicant’s spouse may experience hardship upon relocation to Argentina due to her ties to the United States, lack of ties to Argentina, and language issues.

However, the record does not include supporting documentary evidence of her mother's medical issues. The record does not include supporting documentary evidence of country conditions which would support the claims that the Applicant and his spouse would be unable to find employment there. The record does not include supporting documentary evidence that the Applicant's spouse is receiving therapy, the nature of the therapy, and that she would need to continue the therapy in Argentina. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the Applicant's spouse would experience extreme hardship upon relocation to Argentina.

The next issue to be addressed is whether the Applicant has established extreme hardship to his spouse if she remains in the United States. The Applicant states that his spouse would face emotional and financial hardship if they separate. The Applicant's spouse states that it would be an "utter catastrophe" if she and the Applicant were to be separated. She says that the Applicant helped her through a difficult time in her life when her father died. The Applicant's spouse states that she attends monthly therapy sessions. The Applicant expresses fear that it will be difficult for him to find employment in Argentina given his age. He says that even if he finds a job, it won't be enough to support his spouse as salaries are low there.

The record reflects that the Applicant's spouse may experience emotional hardship in the Applicant's absence. The record does not include supporting documentary evidence that she is undergoing therapy and the nature of the therapy. The record does not include sufficient evidence to establish the degree of financial hardship, if any, that the Applicant's spouse would experience. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the Applicant's spouse would experience extreme hardship upon remaining in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the Applicant has failed to establish extreme hardship to her U.S. citizen spouse 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 the Applicant 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.