



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 18 2015

FILE: [REDACTED]

APPLICATION RECEIPT: [REDACTED]

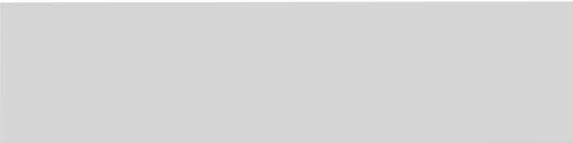
IN RE:

Applicant: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Denver, Colorado, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility in order to remain in the United States with his lawful permanent resident spouse and mother and his U.S. citizen children.

The field office director found that the applicant had established that his qualifying relatives would experience extreme hardship if they were to relocate to Mexico to reside with the applicant, but had failed to establish extreme hardship to a qualifying relative due to separation from the applicant as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director* dated October 17, 2014.

On appeal the applicant contends that USCIS erred by finding his family will not suffer extreme hardship should they remain in the United States without him. With the appeal the applicant submits a statement along with statements from his spouse, his mother, his children and his sister; a mental health evaluation for his spouse; medical documentation for his spouse and his mother; financial documentation including medical bills for his spouse; and school records for his son. The record contains previously-submitted mental health and medical documentation for the applicant's spouse and mother; statements from his spouse, mother, and children; letters of support for the applicant from friends; business-related certificates for the applicant; financial documentation; and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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.

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) . . . if -

....

(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

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(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).

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 the applicant entered the United States on June 8, 1999, as a B1/B2 nonimmigrant visitor with authorization to remain until December 7, 1999. On [REDACTED] 2009, the applicant was convicted in District Court, [REDACTED], Colorado, of second degree forgery in

violation of Colorado Revised Statutes section 18-5-104, for which he was sentenced to two years of probation, two days in jail, and fines and costs totaling more than \$1,500.

At the time of the applicant's conviction Colorado Revised Statutes stated:

§ 18-5-104. Second degree forgery

(1) A person commits second degree forgery if, with intent to defraud, such person falsely makes, completes, alters, or utters a written instrument of a kind not described in section 18-5-102 or 18-5-104.5.

(2) Second degree forgery is a class 1 misdemeanor.

Sentencing for a class 1 misdemeanor under Colorado Statutes § 18-1.3-501 indicates a maximum sentence of 18 months imprisonment, or five thousand dollars fine, or both.

Forgery has been held to be a crime involving moral turpitude. *See Matter of Seda*, 17 I&N Dec. 550 (BIA 1980). Moreover, the applicant does not dispute that his conviction for forgery is a crime involving moral turpitude. Because the maximum imprisonment term for the crime of forgery is more than one year, the applicant fails to qualify for the exception contained in section 212(a)(2)(A)(ii)(II) of the Act.

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. The applicant's lawful permanent resident spouse and mother and his U.S. citizen children are the qualifying relatives in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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 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. I.N.S.*, 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.

As noted above, the field office director determined that the applicant's qualifying relatives would experience extreme hardship if they were to relocate to Mexico to reside with the applicant. As such, this criterion will not be addressed on appeal.

On appeal the applicant's spouse states that she has suffered depression since 2005, when she had suicidal thoughts daily and everyday was a "battle in her mind." She states that the applicant has always been by her side. In his statement the applicant notes that he and his spouse have been married since 1987, and he describes his need to care for his spouse due to her depression. The

applicant's spouse also states that although she does not want to go to a hospital with panic attacks because it is costly, she recently had to go to a hospital where her doctor referred to her to a psychotherapist.

A mental health evaluation by a psychotherapist states that a review of the spouse's medical records shows she was diagnosed with Major Depressive Disorder in 2005, when she reported frequent suicidal thoughts, and that she has continued to take medication since. The evaluation states that the applicant's spouse has been diagnosed with Panic Disorder in addition to Major Depression, shows symptoms of Agoraphobia, and has recurrent panic attacks. The evaluation states that the spouse is unable to work because she is unable to control panic, so she relies heavily on the applicant for financial support. The evaluation states that the spouse shows physical symptoms due to anxiety, including back, neck, and leg pain, and that she reports crying, difficulty concentrating, loss of appetite, isolation, excessive worry, and fatigue.

The report further states that the spouse relies exclusively on the emotional support of the applicant to cope with her daily mental health symptoms, and that she fears the applicant would be hurt in Mexico due to crime and the dire economic situation there. The evaluation concludes that the applicant's spouse would experience major trauma if the applicant leaves for Mexico and that her depression and panic with anxiety could render her disabled.

The applicant's spouse states that she has overdue bills from hospitals, including for gallbladder surgery in 2013. The spouse further states that she is afraid to work for fear of having a panic attack and that she has been unable to help the applicant support the family financially. The record contains documentation showing the spouse's medical bills, payment delinquencies, debt collection notifications, and a judgment against entailing income garnishment.

The applicant's mother states that the applicant is her primary care person for her personal affairs, supplying emotional and spiritual support as well as clothing, food, and transportation to her doctor appointments. The mother states that a daughter had been caring for her but now the daughter has her own health problems. The applicant's sister states that she had cervix uteri cancer in 2003 and breast cancer in 2010, has arthritis which limits her work, and has been diagnosed with depression for which she is prescribed medication. She states that she cannot function normally so is no longer able to care for their mother.

In their statements the applicant's daughters describe their mother's illness, the closeness of the family, and the applicant's emotional and financial support for them, and state how the family, especially their mother, depend on the applicant. The applicant's spouse states that the applicant needs to help their son with material things like clothes, supplies, and school needs, and the applicant's son describes the applicant as his hero, making him strong and showing him to be a gentleman.

Having reviewed the preceding evidence, we find it to establish that the applicant's spouse would experience extreme hardship due to separation from the applicant. In reaching this conclusion, we note the spouse's emotional and medical condition and her financial status. Statements and

documentation submitted to the record show that the applicant and his spouse have been married for nearly 30 years, and that because of his spouse's long-term mental health issues, the applicant's emotional and financial support of his spouse is integral to her well-being. Accordingly, we find that the circumstances presented in this application rise to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's spouse, his mother, and his children would face if the applicant is not granted this waiver, statements of support from the applicant's family and friends, and the passage of time since his criminal conviction. The record also shows that the applicant operates his own business and is a volunteer pastor who studied

(b)(6)



NON-PRECEDENT DECISION

Page 8

theology and helps provide donations and services to those with low income. The unfavorable factors in this matter are the applicant's criminal conviction in the United States and remaining beyond his period of authorized stay.

Although the applicant's violations of immigration law are serious, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.