



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

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

MATTER OF M-L-G-

DATE: APR. 18, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility for unlawful presence and for a conviction for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), and § 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives. The Applicant also seeks a waiver of inadmissibility for alien smuggling under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), which allows a discretionary waiver for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, if the smuggled is the applicant's spouse, parent, son, or daughter.

The Director, Nebraska Service Center, denied the application. The Director concluded that the Applicant had not established that a qualifying relative would experience extreme hardship due to her inadmissibility and denied the application accordingly.

The matter is now before us on appeal. On appeal, the Applicant submits additional documentation and claims that the Director made factual errors in his decision, that the Applicant's conviction qualifies for the petty offense exception, and that the Applicant's mother depends on her and can no longer afford to travel back and forth between Mexico and the United States and is experiencing extreme hardship.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence, specifically having entered the United States without inspection in 1997 and remaining until 2014. Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent parts:

(i) In General

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Any alien (other than an alien lawfully admitted for permanent residence) who—

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of Unlawful Presence

For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The Applicant has also been found inadmissible for having been convicted of a crime involving moral turpitude, specifically a conviction for misappropriation of identity in violation of Wisconsin Statute § 943.201(2)(a), a felony, on [REDACTED], 2004, in [REDACTED], Wisconsin. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides, in pertinent parts:

(i) In General

Except as provided in clause (ii), any 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 . . .

....

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h). Section 212(h)(1)(B) of the Act provides, in pertinent parts:

The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 [Secretary of Homeland Security] 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. . .

The Applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) and section 212(a)(9)(B)(i) and she thus requires a waiver under section 212(h) and section 212(a)(9)(B)(v), which both require that denial of the application would result in extreme hardship to a qualifying relative or relatives. A waiver under section 212(a)(9)(B)(v) of the Act requires that extreme hardship to a U.S. citizen or lawfully resident spouse or parent be established. In this case, the only qualifying relative is the Applicant's mother. Although they would be qualifying relatives under section 212(h), hardship to the Applicant's children can be considered only insofar as it results in hardship to the Applicant's mother, the only qualifying relative for a waiver under section 212(a)(9)(B)(v). See *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). If the Applicant establishes extreme hardship to a qualifying relative under section 212(a)(9)(B)(v), she would also meet the requirements for a waiver under section 212(h) of the Act.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). The Applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The issues on appeal are whether the Applicant is inadmissible for having been convicted of a crime involving moral turpitude and whether the Applicant has established extreme hardship to a qualifying relative.

On appeal, the Applicant claims that her conviction qualifies for the petty offense exception and she is not inadmissible under section 212(a)(2)(A)(i)(I). She also claims that her mother, a lawful permanent resident (LPR), will experience emotional, financial and physical hardship due to her inadmissibility. The Applicant also claims that her children will experience extreme hardship. The Applicant has submitted additional documentation, including: letters from the Applicant, the Applicant's mother and the Applicant's children; medication records for the Applicant's mother; a document listing prices for airline travel to Mexico; and court records concerning her conviction.

The record demonstrates that the Applicant accrued unlawful presence and is inadmissible pursuant to section 212(a)(9)(B)(v) of the Act and was convicted of a crime involving moral turpitude and is inadmissible pursuant to section 212(a)(2)(A) of the Act, and she therefore also requires a waiver of inadmissibility. The record does not establish that a qualifying relative will experience extreme hardship due to her inadmissibility.

A. Inadmissibility

1. Unlawful Presence

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(B)(i) of the Act for unlawful presence. Specifically, the record establishes that the Applicant last entered the United States without inspection in November 1997 and remained until 2014, when she departed the United States for a consular interview in Mexico. Therefore, the Applicant was unlawfully present in the United States for over a year, from November 1997 until 2014, and is now seeking admission within ten years of her last departure from the United States. Accordingly, the Applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The Applicant does not contest this finding.

2. Crime Involving Moral Turpitude

The Applicant claims on appeal that the Director erred factually in concluding the Applicant was inadmissible for a conviction for a crime involving moral turpitude because the conviction qualifies for the petty offense exception in section 212(a)(2)(A)(ii)(II).

In assessing whether a conviction is a crime involving moral turpitude, we must first "determine what law, or portion of law, was violated." *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). We conduct a categorical inquiry for that statutory offense, considering the "inherent nature of the crime as defined by statute and interpreted by the courts," not the underlying facts of the crime

committed. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)). This categorical inquiry focuses on whether moral turpitude necessarily inheres in the minimal conduct for which there is a realistic probability of prosecution under the statute. *See Short, supra; Louissaint, supra; Moncrieffe v. Holder*, 133 S.Ct. 1678, 1684-1685 (2013); *Gonzales v. Duenas-Alvarez*, 127 S.Ct. 815, 822 (2007).

Wisconsin Statute § 943.201(2) states, in pertinent part:

(2) Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any personal identifying information or personal identification document of an individual, including a deceased individual, without the authorization or consent of the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her is guilty of a Class H felony:

- (a) To obtain credit, money, goods, services, employment, or any other thing of value or benefit.
- (b) To avoid civil or criminal process or penalty.
- (c) To harm the reputation, property, person, or estate of the individual.

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).

In *Matter of Flores*, the Board of Immigration Appeals (Board) 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 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.”); *Padilla v. Gonzalez*, 397 F.3d 1016, 1020 (7th Cir. 2005) (finding that obstruction of justice by furnishing false information to a police officer to avoid arrest involved moral turpitude despite lacking fraud as an element because it involved dishonesty that the likely effect of which would be to mislead or conceal.); *Omagah v. Ashcroft*, 288 F.3d 254, 262 (5th Cir. 2002) (finding that crimes that do not involve fraud, but that include “dishonesty or lying as an essential element” also tend to involve moral turpitude); *Itani v. Ashcroft*, 298 F.3d 1213,

1216 (11th Cir. 2002) (“Generally a crime involving dishonesty or false statement is considered to be one involving moral turpitude.”).

A conviction under Wisconsin Statute 943.201(2) requires intentional use of another person’s identity to obtain something of value, avoid civil or criminal penalties, or cause harm to an individual. We find this statute is categorically a crime involving moral turpitude as it involves dishonesty as an essential element.

Wisconsin Statutes § 939.50 states:

- (h) For a Class H felony, a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both.

The Applicant claims that her conviction qualifies for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act.¹ However, her conviction is for a Class H felony under Wisconsin law. According to Wisconsin Statute § 939.50, the maximum possible penalty for a Class H felony is six years. As the maximum possible penalty for a conviction under this statute exceeds one year, her conviction does not qualify for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act.

3. Smuggling

The record indicates that the Applicant entered the United States without inspection with her young son in 1990, and was found inadmissible pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for alien smuggling. Section 212(a)(6)(E) of the Act provides, in pertinent part:

- (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.
.....
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

The Applicant does not contest her inadmissibility under this provision. As the record demonstrates that the person she brought with her was her son, her inadmissibility can be waived under section 212(d)(11), which allows a discretionary waiver for humanitarian purposes, to assure family unity,

¹ Section 212(a)(2)(A)(ii)(II) of the Act provides that section 212(a)(2)(A)(i)(I) “shall not apply to an alien who committed only one crime if . . . the maximum penalty possible for the crime of which the alien was convicted . . . 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”

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or when it is otherwise in the public interest, if the smuggled is the applicant's spouse, parent, son, or daughter.

B. Waiver

For a waiver under section 212(a)(9)(B)(v) of the Act, the Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her mother.

The Applicant claims that her mother will experience emotional, financial and physical hardship. With regard to emotional hardship due to separation, the record contains statements from the Applicant's mother and children. The Applicant's mother has stated that she worries about the future of the Applicant's children without their mother and that she must stay in the United States due to "trauma" to the Applicant's children if the Applicant is removed. She also states that she would worry about the Applicant's safety due to the violent conditions in Mexico.

The record contains statements from the Applicant's children indicating that they are employed adults, and, while experiencing some emotional hardship due to separation from their mother, their letters do not indicate that they are experiencing an uncommon emotional hardship. The record also contains an article discussing psychological parenting theory; however this article discusses the developmental needs of young children and the Applicant's children, born between 1990 and 1993, are all adults. While we acknowledge the emotional hardship the Applicant's mother and children are experiencing as a result of separation from the Applicant, the record does not establish the severity of emotional hardship and the effects it will have on her mother's daily life.

The record contains background articles on the social and economic conditions in Mexico, including articles discussing the drug-related violence in certain parts of the country. The record indicates the Applicant's mother was residing in [REDACTED] Jalisco in 2013. The articles discussing the drug war in Mexico detail the ongoing violence, but do not focus on conditions in Jalisco. A U.S. Department of State report from the Bureau of Diplomatic Security was submitted, but the report does not single out Jalisco as an area of high drug crime. The most recent Travel Warning for Mexico, also published by the State Department, urge caution when travelling to remote regions and advises to defer travel to the parts of Jalisco that border Michoacán and Zacatecas, but does not warn against travel to the area where the Applicant is residing. We acknowledge that the Applicant's mother may be concerned for the Applicant's safety, but do not find the record to support that this concern results in a hardship to the Applicant's mother.

With regard to financial hardship due to separation, the Applicant claims that her mother has only been residing in Mexico temporarily, and that her mother depends on her and can no longer afford to travel back and forth between Mexico and the United States. The record indicates the Applicant's mother has periodically resided in Mexico, but it is unclear from the record when her mother began residing in the United States or with whom she resides. The Applicant states that her mother is financially dependent solely on her as the head of household and refers to taxes and banking records

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submitted to the record. The record also includes a copy of money transfers sent by the Applicant to her mother while the Applicant's mother was residing in Mexico. The Applicant's mother also states that the Applicant purchased her medications.

The record contains various tax records, banking statements and an employment letter; however these documents do not indicate that the Applicant's mother is financially dependent solely on the Applicant. The record indicates that the Applicant's mother is married and that she has other immediate family members residing in the United States, such as her adult grandchildren. A letter from the Applicant's adult son also refers to his uncles and aunts, stating that they would lose a caring sister if the Applicant is denied admission to the United States, but does not specify where they reside. The record does not establish where the mother resides in the United States or that the Applicant's mother could not receive financial support from another family member in the Applicant's absence.

On appeal the Applicant has submitted pictures of medications which she claims her mother takes. The packages are all in Spanish and it appears the medications were purchased in Mexico. There is no documentation supporting the assertion that the Applicant is the one who has purchased these medications, and the record does not contain any medical records pertaining to the Applicant's mother's medical conditions or her need to take medications.

When examined in the aggregate, the evidence in the record does not establish that any emotional, financial, or physical hardship the Applicant's mother is experiencing is beyond that commonly experienced as a result of separation from a family member and rises to the level of extreme hardship.

With regard to hardship due to relocation, the Applicant has asserted that her mother will experience physical and financial hardship due to relocation. The Applicant's mother states that her grandchildren will not have the same educational opportunities in Mexico and that she is worried about the violence in Mexico. As stated above, the Applicant's children are adults and are not qualifying relatives under section 212(a)(9)(B)(v), and none of the Applicant's children have indicated they intend to relocate to Mexico with their mother.

With regard to the conditions in Mexico and any hardship to the Applicant's mother if she relocates there, the Applicant has stated that her mother grew up in Mexico and visits there often and has not established that she has been affected by the drug-related violence. The Applicant's mother is [REDACTED] years old, and the record indicates that she was residing in Mexico as recently as 2013, when she submitted a letter indicating she was residing in Jalisco, she is elderly and does not work, and she needs to stay in the United States and join the Applicant's family. The record does not indicate that the Applicant is unable to work, or that the Applicant's mother would be unable to seek financial assistance from other immediate family members, either those residing with her in Mexico or those residing in the United States.

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On appeal the Applicant has submitted pictures of medications which she states are taken by her mother. However, the record does not indicate what medical conditions her mother has or provide any evidence concerning her mother's medical condition. The record indicates the Applicant's mother has resided in Mexico previously, but there is no indication that she was unable to function or provide for her medical needs while residing there. The record does not support a determination that the Applicant's mother would experience uncommon hardship upon relocation. When examined in the aggregate, the record does not establish that the Applicant's mother will experience hardship rising to the level of extreme hardship upon relocation.

C. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion. Further, no purpose would be served in determining whether she is eligible for a waiver of her section 212(a)(6)(E) inadmissibility under section 212(d)(11) of the Act, as granting a waiver under this provision would not result in the Applicant's inadmissibility.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of M-L-G-*, ID# 15946 (AAO Apr. 18, 2016)