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

U.S. Citizenship and Immigration Services

H6

Date: AUG 02 2011 Office: BALTIMORE FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h), 212(i), and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), (i), (a)(9)(B)(v)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Hamway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who was found to be inadmissible to the United States pursuant to 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 crimes involving moral turpitude. The record shows that he is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States by willful misrepresentation. The record shows that the applicant may further be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of his last departure; under section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for falsely representing himself to be a citizen of the United States in attempt to procure admission to the United States; and under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having been unlawfully present for one year or more and subsequently entering the United States without being admitted. He seeks waivers of inadmissibility in order to reside in the United States with his U.S. citizen wife and daughter.

The district director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director,* dated July 27, 2010.

On appeal, counsel for the applicant asserts that the applicant has shown that his wife will suffer extreme hardship should the present waiver application be denied. *Statement from Counsel on Form I-290B*, dated August 25, 2010.

The record contains, but is not limited to: a brief from counsel; psychological evaluations for the applicant's wife; documentation in connection with the applicant's and his wife's taxes, finances, assets, and employment; information on Canadian immigration; a report on the consequences of immigration difficulties on children; statements from the applicant, as well as the applicant's wife, mother-in-law, father-in-law, friends, and grandfather-in-law; information on unemployment rates in Canada; and documentation on the applicant's criminal history. 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) 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 shows that the applicant has been convicted of multiple theft offenses in Canada, including: Theft under $5,000 on December 8, 1999 for which he was sentenced to seven days of incarceration, 24 months and 30 days of probation; Theft under $1,000 on November 21, 1991; Theft on May 16, 1985; and Theft on November 29, 1983. Based on his December 8, 1999 conviction alone, the district director determined that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The applicant does not contest this finding on appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

. . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

The record shows that the applicant has been refused admission to the United States on at least one occasion. On May 15, 2004 the applicant applied for admission at Calais, Maine, and he provided false information to U.S. immigration inspectors. Specifically, he claimed that he wished to enter the United States to "visit" his wife, and that he did not work in the United States, when in fact he intended to return to his indefinite U.S. residence and employment. It is noted that the applicant stated on a Form G-325A, Biographic Information, that he worked in Maryland as a pipe fitter for R&K Enterprises from July 2001 until the dated he executed the form, May 20, 2004, which supports that he was in fact employed in the United States at the time of his attempted entry. Accordingly, the applicant made material misrepresentations in order to gain admission to the United States, and he is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - 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.

The applicant stated on a Form G-325A, Biographic Information, dated May 20, 2004, that he resided in the United States from June 2001 until June 2003. However, the applicant has not shown that he had a legal immigration status during this period. Accordingly, the record supports that he accrued at least one year of unlawful presence during this period. As he subsequently departed the United States, the record further supports that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of his last departure.

Section 212(a)(9) of the Act states in pertinent part:

....

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The applicant submitted a letter from his brother, [redacted] dated April 23, 2009, in which [redacted] explains that the applicant visited him in Canada from January 7 to 12, 2007. [redacted] notes that the applicant was extremely upset due to the fact that he had been denied reentry to the United States. [redacted] states that the applicant requested that he take him across the United States border with Canada to Bangor, Maine so that the applicant could fly to Maryland to rejoin his wife. [redacted] indicates that he drove the applicant to the United States border near Calais, Maine, where he presented his Canadian passport and the applicant presented his Maryland driver's license. He asserts that "the guard carried out a quick perusal of the documents and inquired as to where we were headed." He continues that he "told [the inspector he] was taking [the applicant] to Bangor, where he was catching a flight to his home in Maryland." He stated that they "were waived through without further incident."

The applicant has not shown that his January 12, 2007 entry to the United States was lawful. [redacted] description of this entry presents significant irregularities and is not supported by any evidence in the record. The facts as recounted by [redacted] suggest that the applicant claimed

to be a citizen of the United States, as he did not present his passport or any Canadian identification, but instead chose to only present a U.S. driver's license. If the applicant made a false claim to U.S. citizenship on January 12, 2007, he is inadmissible under section 212(a)(6)(C)(ii) of the Act, for which there is no waiver. Further, the applicant was aware that he was not admissible to the United States based on his criminal and immigration history. Even if the applicant did not make a false claim to U.S. citizenship, the facts of his entry as recounted by suggest that he made misrepresentations to gain entry to the United States, as he would not be entitled to admission as a foreign national with only a Maryland driver's license. Such misrepresentations would serve as further incidents that render him inadmissible under section 212(a)(6)(C)(i) of the Act. Further, the irregularities in account of the applicant's entry call into question whether the applicant in fact presented himself for inspection upon entry to the United States. If the applicant entered without inspection, the record would support that he is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present for one year or more and subsequently entering the United States without being admitted.

Based on the foregoing, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for making material misrepresentations on May 15, 2004 to attempt to procure admission to the United States, and he requires a waiver under section 212(i) of the Act. The district director did not indicate that the applicant is inadmissible under section 212(a)(9)(C) of the Act. However, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

The applicant must obtain waivers for all grounds for which he is inadmissible.[1] Section 212(i) of the Act requires that an application show extreme hardship to his U.S. citizen or lawful permanent resident spouse or parent, while section 212(h) of the Act requires that an application show extreme hardship to his U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. It follows that if the applicant is eligible for a waiver under the more restrictive standard of section 212(i) of the Act, he is also eligible for a waiver under section 212(h) of the Act. Accordingly, the AAO will first assess the applicant's eligibility for a waiver under section 212(i) of the Act before examining his criminal history and eligibility for a waiver under section 212(h) of the Act.

A waiver of inadmissibility under section 212(i) 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 or parent of the applicant. Hardship to the applicant or his daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative under the standard of section 212(i) of the Act. If extreme hardship to a

[1] As noted above, if the applicant is inadmissible under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship, no waiver is available under the Act and the waiver application must be denied on that basis. Further, if the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 10 years must have passed since the date of his last departure before he may be admitted, and the Act does not provide for waiver of this requirement.

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 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

The applicant presents evidence to show that his wife will suffer hardship should the present waiver application be denied. Counsel asserts that the applicant's wife will endure exacerbation of already existing psychological conditions, as well as devastating financial loss. *Brief from Counsel*, at 3, submitted September 24, 2010. Counsel discusses a report on the applicant's wife's mental health conducted by a licensed clinical psychologist, and contends that it identifies numerous symptoms the applicant's wife is suffering including Major Depressive Disorder and Panic Disorder. *Id.* at 5, 7-9. Counsel asserts that distinguished the applicant's wife's depression from the normal consequences of family separation. *Id.* at 9. Counsel contends that weight must be given to the impact of the applicant's wife's emotional hardship on her physical health, as she has also been diagnosed with hypertension. *Id.* at 10-11. Counsel asserts that the applicant's wife would suffer additional hardship should she be separated from the applicant due to the birth of their daughter. *Id.* at 11. Counsel asserts that the applicant and his wife would suffer economic loss should they sell their home, and that the applicant's wife cannot meet her expenses without the applicant's contribution to the household. *Id.* at 6. Counsel contends that foreclosure and damage to the applicant's wife's credit worthiness will have a negative impact on her employment in the credit and loan industry, and will lead to the loss of her current employment. *Id.* Counsel draws a connection between the applicant's wife's financial difficulty and her emotional and physical health. *Id.* at 11-12.

Counsel asserts that the applicant's wife would endure hardship should she relocate to Canada, as she would be separated from her extended family and close friends, she would endure financial loss and a lack of employment prospects, and her mental health would be negatively impacted. *Id.* 13-15. Counsel asserts that the applicant has been experiencing complications due to a potassium allergy, and that his challenges are having an impact on his wife. *Id.* at 15-16.

Counsel asserts that the applicant warrants a favorable exercise of discretion, as the positive factors in this case outweigh "the criminal conviction that renders him inadmissible." *Id.* at 16. Counsel asserts that the applicant has exhibited remorse since his 1999 conviction, and that "he has since made a complete life-style change." *Id.* at 17. Counsel contends that the applicant's infant daughter would be negatively impacted should the applicant depart the United States. *Id.*

On review, the applicant has not distinguished his wife's hardship from the common consequences faced by individuals who relocate or become separated from a spouse due to inadmissibility. The record shows that the applicant's wife owns a home with substantial mortgage debt. However, though the applicant and his wife may incur financial loss should they sell the home in the present market, the applicant has not shown that such economic hardship rises to an extreme level. The applicant's wife asserts that the sale of the home would impact her employment in the credit industry, yet the applicant has not established that should they sell the home at a loss that their credit worthiness would be impacted. The record does not reflect that foreclosure would be imminent.

It is noted that, should the applicant's wife relocate to Canada, she would likely be compelled to seek new employment – a common consequence when an individual joins a spouse outside the United States. While the applicant submitted unemployment rates in Canada to support that unemployment is high in Newfoundland, the same documentation shows that rates are considerably

lower in other parts of Canada, and the applicant has not established that he and his wife would be compelled to reside in Newfoundland. As the applicant is seeking permanent residence in the United States, it is evident that he and his wife are willing to reside in a location they deem more favorable than Newfoundland. The record does not show that the applicant and his wife would lack employment opportunities in Canada that are sufficient to meet their needs there. While the applicant's wife would endure financial consequences should the applicant reside outside the United States, the applicant has not shown that such challenges would be extreme.

The AAO has carefully examined the psychological evaluation of the applicant's wife, as well as the subsequent letter from . It is evident that the applicant's wife is facing considerable emotional difficulty due to the applicant's inadmissibility. The AAO acknowledges opinion that the applicant's wife is particularly vulnerable to the psychological disruption family separation or relocation will cause. Yet, the record contains no indication that the applicant's wife has required, sought, or received follow-up care from a mental heath professional. While the AAO values the opinion of , the assessments do not, by themselves, establish that the applicant's wife will suffer extreme emotional hardship if the present waiver application is denied.

discusses the impact on the applicant's two-year-old daughter, primarily the consequences of separation from a parent. However, the applicant has not shown that he, his wife, and their daughter would suffer extreme hardship should they reside in Canada, thus separating the applicant's child from one of her parents is not a consequence of denial of the present application.

The record shows that the applicant has endured a recent health challenge, yet he has not shown that he, his wife, or their daughter would lack access to required medical care in Canada. Other factors referenced by the applicant are common consequences of inadmissibility, including separation from family, friends, and community. We have, nevertheless, considered all such stated elements of hardship in aggregate, but we are unable to conclude that the applicant's wife would suffer extreme hardship should the present waiver application be denied, as required for a waiver under section 212(i) of the Act.

The AAO further notes that, had the applicant shown that his wife would experience extreme hardship, the present waiver application would be denied as a matter of discretion. The applicant has a long history of unlawful conduct including multiple convictions for theft and violations of U.S. immigration law, including willful misrepresentations to U.S. officers. The applicant was convicted of theft offenses in 1983, 1985, 1991, and 1998. Though the applicant was age 17 on the date of his offense in 1983, the act was the beginning of a 15-year criminal history. The AAO is not persuaded that these acts were the indiscretions of the applicant's youth, as he was age 32 on the date of his most recent conviction.[2]

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[2] The record shows that the applicant was charged in Maryland with Fraud Conversion of Leased Goods and Theft: $500 Plus Value for his actions in 2002. Though the District Court of Maryland for Carroll County rendered a judgment of *Nolle Prosequi* for each charge, the record contains a detailed account of the applicant's actions that led to the charges. The applicant rented a tow dolly valued at $1,510.42 for a two-day agreement, then failed to return the property, causing Maryland police to make attempts to locate him in Canada over one month later. While the applicant's actions

Furthermore, the applicant has continued to engage in dishonest conduct and disregard the law for his own interest. As discussed above, on May 15, 2004 the applicant applied for admission at Calais, Maine by making willful misrepresentations to U.S. officers. The account of the applicant's January 12, 2007 entry to the United States strongly suggests that he again made misrepresentations to U.S. officers, as he was aware that he was not then permitted to enter the United States lawfully.

Thus, the applicant's pattern of dishonesty and violation of law extends from age 17 to at least age 40, with incidents occurring throughout this period. Counsel asserts that numerous individuals have provided letters in support of the applicant, and that the applicant has shown considerable remorse and rehabilitation since his criminal conviction. However, as discussed above, the applicant has continued to knowingly violate laws since the date of his last conviction. The applicant's actions do not exhibit remorse, and the AAO is not persuaded that he has rehabilitated himself or that he would cease from engaging in further unlawful activity in the United States.

It is evident that the applicant and his wife will face financial and emotional challenges should the applicant be prohibited from residing in the United States. Relocation to Canada would impact the applicant's daughter, though, as a toddler, the record does not show that she would endure unusual difficulty adjusting. The applicant has not presented compelling positive factors that overcome the many negative factors that weigh against approving his waiver application.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h), (i), and 212(a)(9)(B)(v) 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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in this regard did not lead to a criminal conviction or a further basis of inadmissibility, in the exercise of discretion the AAO examines all indications of the applicant's character in the record. The allegations call into question whether he has rehabilitated himself since his 15-year pattern of theft convictions.