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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**



PUBLIC COPY



H6

Date: Office: TEGUCIGALPA

JUL 06 2011

IN RE: Applicant:

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

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Honduras 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 a crime involving moral turpitude. She was also found 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 her last departure. She seeks waivers of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to her husband. *Decision of the Field Office Director*, dated March 10, 2009.

On appeal, counsel for the applicant asserts that the applicant has shown that her husband will suffer extreme hardship should the present waiver application be denied. *Statement from Counsel on Form I-290B*, dated April 8, 2009.

The record contains a brief from counsel; statements from the applicant's husband; a psychological evaluation for the applicant's husband; documentation of funds transferred from the applicant's husband to the applicant; and documentation of the applicant's criminal conviction. The applicant provided a document in a foreign language. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated document, 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.)

On August 25, 2000, the applicant was convicted in Louisiana of aggravated battery under Louisiana Code, Revised Statutes § 14:34. At the time of the applicant's conviction, Louisiana Code, Revised Statutes § 14:34 provided:

Aggravated battery is a battery committed with a dangerous weapon.

Whoever commits an aggravated battery shall be fined not more than five thousand dollars, imprisoned with or without hard labor for not more than ten years, or both.

The AAO notes that the Eleventh Circuit Court of Appeals has held that aggravated battery, which includes the use of a deadly weapon or results in serious bodily injury, is a crime involving moral turpitude. See *Sosa-Martinez v. U.S. Atty. Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2005). In view of the holding in *Sosa-Martinez* that aggravated battery involves moral turpitude, the AAO finds the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest her inadmissibility under this section on appeal.

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 that she first entered the United States without inspection on or about September 25, 1988. He indicated that she remained until July 2005, when she departed to Honduras. Based on these assertions, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until she departed July 2005. This period totals over eight years. She now seeks admission as an immigrant pursuant to her marriage to a U.S. citizen. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on appeal.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of 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.

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

The Attorney General 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

(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 . . .; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In order for the applicant to establish admissibility, she must obtain waivers under both sections 212(h) and 212(a)(9)(B)(v) of the Act. The AAO will first examine whether she has shown that she qualifies for a waive under section 212(a)(9)(B)(v) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative 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-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 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).

In a statement dated April 7, 2009, the applicant's husband expresses that he is enduring emotional hardship due to separation from the applicant. He asserts that the applicant has medical problems including "bad kidneys," and that her situation is dire. He states that the applicant's condition is causing him great anxiety, depression, and overall mental fatigue, as he is unable to relocate to Honduras to assist her due to the fact that he is employed in the United States and he cares for his mother. The applicant's husband states that he has seen two psychologists due to his mental distress, and that he is taking pain medication and muscle relaxers to control his stress-related symptoms. He indicates that he is enduring financial hardship due to the fact that he must support the applicant and her medical needs in Honduras, while supporting himself and his mother in the United States.

In a statement dated December 26, 2007, the applicant's husband stated that he works 70 hours each week to maintain the applicant, himself, and his mother. He provided that he experiences frustration due to the inability to be with the applicant, and that his anger may eventually cause the loss of his

job. He added that he suffered damage to his left foot while serving in the U.S. military, and that only that applicant can take care of him. He stated that his apartment and belongings were destroyed in New Orleans by hurricane Katrina, and that he requires the presence and support of the applicant to help rebuild his home and life.

The applicant provided a psychological evaluation of her husband, conducted by [REDACTED], dated April 7, 2009. [REDACTED] discusses the applicant's husband's history and challenges, and diagnoses him with Depressive Disorder NOS, Complicated by Significant Anxiety and Residual PTSD Symptoms. Dr. [REDACTED] commented that the applicant's husband should have adjusted to separation from the applicant as of the evaluation, but that he had not. [REDACTED] recommended that the applicant's husband be referred for psychiatric evaluation in order to explore the possibility of placing him on antidepressant medication, and for individual psychotherapy.

Upon review, the applicant has not shown that her husband will endure extreme hardship should the present waiver application be denied. The AAO has carefully examined the report from [REDACTED] and acknowledges that the applicant's husband is experiencing emotional hardship due to separation from her. It is noted that the applicant has not indicated or shown that her husband has sought the recommended psychiatric evaluation or individual psychotherapy. While the report from [REDACTED] is helpful in describing the applicant's husband's challenges, it does not, by itself, establish that he is suffering emotional consequences that can be distinguished from those commonly experienced when spouses reside apart due to inadmissibility.

The applicant's husband asserts that the applicant has serious health problems for which she is receiving treatment in Honduras. However, the applicant has not provided any medical documentation to support this assertion. While the record contains a foreign-language document, without an English translation it is not probative in this proceeding.

The applicant's husband asserts that he is facing economic difficulty due to supporting the applicant in Honduras. The applicant submits a record of money transfers from her husband to her. However, such transfers are not evidence of specific expenses, and the AAO is unable to determine whether she in fact required such funds. The applicant has not shown that she lacks the ability to engage in employment in Honduras to meet her needs, or that she has unusual expenses such as costs for medical care. Thus, there is insufficient evidence in the record to show that the applicant's absence constitutes a financial burden for her husband.

The applicant's husband asserts that he cannot relocate to Honduras, in part due to his employment in the United States. However, the applicant has not submitted any evidence to show that her husband is presently employed in the United States. The applicant's husband contends that he cares for his mother who has health problems, yet the applicant has not provided any evidence such as medical records to support that her mother-in-law has health problems that require the assist of her husband. Nor has the applicant explained whether other family members are available to assist her mother-in-law if needed. It is understood that relocating to another country after a lengthy residence in the United States often results in substantial challenges, including emotional, physical, and economic difficulties. However, without further explanation or evidence, the applicant has not shown that her husband would face extreme circumstances should he join her abroad.

All stated elements of hardship have been considered in aggregate. Based on the foregoing, the applicant has not shown that denial of her waiver application under section 212(a)(9)(B)(v) of the Act “would result in extreme hardship” to her husband.

Based on the foregoing, the applicant is not eligible for a waiver under section 212(a)(9)(B)(v) of the Act. As such, no purpose would be served in assessing whether she is eligible for a waiver under section 212(h) of the Act. Nor would a purpose be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) 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.