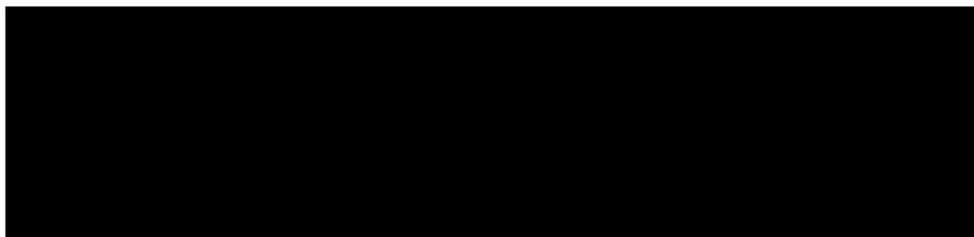


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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H2

DATE: JUL 10 2012

OFFICE: GUANGZHOU, CHINA

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of China 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 committed a crime involving moral turpitude and section 212(a)(3)(D)(i) for his membership in the Chinese Communist Party. The applicant is the spouse of a lawful permanent resident and the father of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that his inadmissibility would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated December 15, 2009.

On appeal, the applicant states that his conviction for bribery was the result of a conspiracy of the part of the Guangzhou government and that he did not engage in misconduct but was a victim of the anti-corruption activities of the Communist Party. He also asserts that his communist party membership is more than five years in the past, having ended in 2004. The applicant further maintains that his spouse requires his care as she is suffering from multiple medical problems. *Form I-290B, Notice of Appeal or Motion*, dated January 1, 2010.

The record of evidence includes, but is not limited to: statements from the applicant; medical records for the applicant's spouse; court records relating to the applicant's conviction and documentation relating to his membership in the Chinese Communist Party. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(3)(D) of the Act states:

(i) **In general** Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) **Exception for involuntary membership** Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General [Secretary of Homeland Security] when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) **Exception for past membership** Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General [Secretary] when applying for admission) that-

(I) the membership or affiliation terminated at least-

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) **Exception for close family members** The Attorney General [Secretary] may, in the Attorney General's [Secretary's] discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

The record establishes that the applicant's membership in [REDACTED] was terminated [REDACTED]. [REDACTED]

[REDACTED] dated September 16, 2008 and January 5, 2009. As it has been more than five years since the applicant's communist party membership was terminated,¹ the AAO finds that he is eligible for the exception for past membership offered under section 212(a)(3)(D)(iii)(I)(b) of the Act. Accordingly, section 212(a)(3)(D)(i) of the Act no longer bars the applicant's admission to the United States.

Section 212(a)(2)(A) of the Act states, in pertinent part:

(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.

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....

¹ The AAO notes that an application for admission or adjustment of status is considered a "continuing" application and "admissibility is determined on the basis of the facts and the law at the time the application is finally considered." *Matter of Alarcon*, 20 I.&N. Dec. 557, 562 (BIA 1992) (citations omitted).

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.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. The methodology adopted by the Attorney General consists of a three-pronged approach. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. 24 I&N Dec. at 698 (citing *Duenas-Alvarez*, 549 U.S. at 193). If a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage or “modified categorical” inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. 24 I&N Dec. at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708. Finally, if review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709.

In the present case, the record reflects that, on [REDACTED], the applicant was convicted in the Guangzhou Intermediate People’s Court of Guangdong Province of having accepted bribes and of misconduct relating to his management of a state-owned company. He was sentenced to five years in prison, which was subsequently reduced by nine months and 26 days for reasons relating to the applicant’s health and good behavior.

The AAO is unable to conduct analyses of the applicant’s conviction under the first and second prongs of the analytical framework articulated in *Silva-Trevino*. The record does not contain a citation for or the language of the statute(s) under which the applicant was convicted, or sufficient documentation from his record of conviction on which to base such examinations. Accordingly, we have reviewed the record for any evidence that would assist us in defining the bribery offense referenced in the applicant’s sentencing documents.

An August 22, 2008 certificate issued by the Personnel Section, [REDACTED] the applicant’s former firm, indicates that the bribery charges brought against him were the result of his acceptance of “holiday lucky money” from two of his subsidiary companies. On appeal, the applicant acknowledges that as chairman of his former company, he accepted payments from two subsidiary firms, but asserts that they were an annual bonus or

“enterprise benefit,” and that he performed no favors as a result. Based on the information provided in the certificate, the AAO concludes that the bribery offense with which the applicant was charged under Chinese law is bribery as it is commonly understood in U.S. law, “[t]he corrupt payment, receipt, or solicitation of a private favor for official action.” *Black’s Law Dictionary*, Ninth Edition, 2009.

The BIA and U.S. courts have long held offenses involving the payment or acceptance of bribes to be crimes involving moral turpitude. *Matter of V*, 4 I&N Dec. 100, 102 (BIA 1950)(finding that a German conviction for attempted bribery was for a crime involving moral turpitude; *Matter of H*, 6 I&N Dec. 358 (BIA 1954)(holding that the acceptance or solicitation of a bribe by a government employee is a crime involving moral turpitude); *Okabe v. INS*, 671 F.2d 863, 865 (5th Cir. 1982)(noting that bribery is a crime involving moral turpitude as it involves a corrupt mind); *Sollazzo v. Esperdy*, 285 F.2d 341, 342 (2nd Cir. 1961)(stating “[t]here can be no question but that any crime of bribery involves moral turpitude”)

Although the AAO notes the applicant’s claim on appeal that the payments he received were bonuses, not bribes, and that his conviction was the result of a conspiracy on the part of the Guangzhou government, we find no evidence in the record to support these assertions. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The burden of proof in waiver proceedings is entirely on the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Therefore, the AAO concludes that the applicant’s conviction for bribery under Chinese law is a conviction for a crime involving moral turpitude and bars his admission to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

As the applicant has been found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his conviction for bribery, the AAO will not consider whether his misconduct conviction is also a conviction for a crime involving moral turpitude.

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

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 or child of the applicant. Hardship to the applicant or other family members can be considered only to the extent that it results in hardship to a qualifying relative. The

applicant's lawful permanent resident spouse and his U.S. citizen son are the qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 BIA 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 BIA 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 BIA 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 BIA has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in

considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In statements, dated September 16, 2008, November 29, 2009, and January 6, 2010, the applicant asserts that his elderly spouse, who emigrated from China in 2003, is in poor health. He states that she suffers from heart disease and osteoporosis, which has deformed her feet and made it difficult for her to move freely. He also maintains that she is suffering from age-related conditions, such as cataracts, which cause her problems. The applicant states that his U.S. citizen son and daughter-in-law, with whom his spouse lives, both work and cannot care for her, and that she needs his assistance. He contends that the denial of the waiver application will mean that he and his spouse will be separated after 50 years of marriage. He further asserts that if he is not reunited with his son and other relatives, they would suffer both physical and mental harm.

In support of the applicant's claims concerning his spouse's health, the record contains the results of an echocardiogram performed on the applicant's spouse on August 3, 2008 and a November 20, 2004 medical report that indicates she has been diagnosed with osteoporosis and is at "moderately higher risk" of fractures than a "young normal person of the same sex." While the AAO finds the record to establish that the applicant's spouse has osteoporosis, the November 20, 2004 medical report fails to indicate that her condition has resulted in problems with her feet or has limited her mobility. We also find the results of the applicant's spouse's echocardiogram, absent further explanation by a licensed medical practitioner, to offer insufficient evidence of the nature and severity of the applicant's spouse's heart condition. As a result, the record does not demonstrate the status of the applicant's spouse's health or that she requires any type of assistance or care.

While the AAO notes the applicant's lengthy marriage to his spouse, we do not find the hardship factors in the record, even when considered in the aggregate, to establish that she would experience extreme hardship if the waiver application is denied and she continues to reside in the United States. Moreover, although the applicant asserts that his son would experience both physical and mental harm as a result of his inadmissibility, he does not indicate what that harm would be, nor offer any evidence of that harm. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the record does not establish that continued separation would result in extreme hardship for a qualifying relative.

We also note that the applicant has not asserted that his spouse or son would experience any hardship if the waiver application is denied and they relocate to China. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships the applicant's spouse and/or son would encounter in China. We must, therefore, conclude that the applicant has failed to establish that a qualifying relative would experience extreme hardship upon relocation.

As the record does not demonstrate that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, he has failed to establish eligibility for a waiver under

section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval 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.