U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: APR 15 2013 Office: SAN SALVADOR FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador 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 (Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen. On March 30, 2011, she filed an Application for Waiver of Ground of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. §§ 1182(h), in order to reside in the United States with her U.S. citizen spouse.

In a decision dated March 7, 2012, the field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility and denied the Form I-601 waiver application accordingly.

On appeal, the applicant asserts that the evidence outlining emotional and educational difficulties demonstrates extreme hardship to her husband. The applicant further asserts that her involvement in the criminal scheme which led to her criminal conviction was minimal, as evidenced by the court's sentence of two years of probation. The applicant states that she complied with all of the court's requirements and has rehabilitated.

The record includes, but is not limited to the applicant's affidavit statement on appeal, the applicant's husband's statement, a copy of the judgment and sentence entered against the applicant, and documentation regarding the applicant's criminal proceeding.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, 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 –
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

The Board of Immigration Appeals (Board) 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.)

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. 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. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, 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 inquiry in which the adjudicator reviews the "record of conviction" to determine if the conviction was based on conduct involving moral turpitude. *Id.* 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.

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. However, this "does not mean that the parties would be free to present any and all evidence bearing on an alien's conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself." *Id.* at 703.

The record reflects that on October 22, 2004, the applicant was convicted in the [redacted] of violating article [redacted] The applicant pled guilty to the offense and was sentenced to two years imprisonment, suspended, and was placed on probation for a period of two years. The field office director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

At the time of the applicant's conviction, [redacted] Penal Code provided that:

> "The officer or public employee who, due to his position, intervenes in any agreement or procurement bid or auction in which the Ministry of Finance is interested, and accepts commission or money percentages or gifts offered by interested parties or third parties will be sanctioned with imprisonment of two to five years. If the officer or public employee was the one requesting the commission or percentage this sanction shall be increased up to a third of the maximum."

The AAO first notes that from the elements of the offense, it can be concluded that the applicant was convicted of a bribery offense. It is well-established that the offense of bribery constitutes a crime involving moral turpitude. In *Matter of H-*, 6 I&N Dec. 358, 261 (BIA 1954), the Board held that:

> "We believe the offense of bribery is a base and vile act which involves moral turpitude. The offense in question moreover is one whereby the Government has been cheated out of services the community is rightfully entitled to and it involves the obstruction of lawful governmental functions by ... dishonest means. Such an offense clearly involves moral turpitude."

See also Okabe v. INS, 671 F.2d 863, 865 (5th Cir. 1982) (holding that offering a bride is a crime involving moral turpitude because "a corrupt mind is an essential element of the offense"); *Matter of V-*, 4 I&N Dec. 100 (BIA 1950) (stating that attempted bribery "has always been considered *malum in se* in both Anglo-American and Continental law and, therefore, involves moral turpitude.").

[redacted] proscribes only the acts of requesting or accepting a bribe as an official person. As the Board has clearly indicated that acts of bribery involve moral turpitude, the AAO finds that the language of article [redacted] does not encompass conduct that does not involve moral turpitude. Thus, convictions under article 328(2) may be categorically deemed crimes involving moral turpitude.

On appeal, the applicant asserts that her involvement in the scheme was minimal and that she pled guilty to the crime after the prosecutor offered "a conflict solution called abbreviated procedure which allowed the imposition of minimum punishment." However, it is a well-established principle of immigration law that immigration adjudicators cannot entertain collateral attacks on a judgment of conviction unless that judgment is void on its face, and cannot go behind the judicial record of conviction to relitigate the facts that led to the applicant's grand theft conviction. *See Matter of Madrigal*, 21 I&N Dec. 323, 327 (BIA 1996); *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974); *see also Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988) (observing that for purposes of deportability, immigration adjudicators cannot go behind the record of conviction to redetermine the alien's guilt or innocence). Consequently, the AAO cannot entertain the applicant's claims regarding the circumstances and facts leading to her conviction.

Accordingly, the applicant has been convicted of a crime involving moral turpitude and she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Section 212(h) of the Act provides a

waiver for inadmissibility under section 212(a)(2)(A) of the Act. That section provides, in pertinent part, that:

> (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 –
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> . . .
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> (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 . . . .

The AAO begins its analysis by noting that section 212(h) of the Act provides that a waiver of inadmissibility is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). In this case, the applicant asserts that denial of her admission will impose extreme hardship upon her U.S. citizen spouse.

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). These 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 the 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 to be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage; loss of current employment; inability to maintain one's present standard of living; inability to pursue a chosen profession; separation from family members; severed community ties; cultural readjustment after living in the United States for many years; cultural adjustment of qualifying relatives who have never lived outside the United States; inferior economic and educational opportunities in the foreign country; or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 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 is not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The AAO now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

The asserted hardship factors to the qualifying relative are the emotional hardships in the event of separation and relocation, and educational hardship in the event of relocation to El Salvador. The applicant's husband states in a declaration dated April 17, 2012 that he moved to El Salvador away from his family and his studies when he learned of a problem with his wife's visa application. He indicates that El Salvador is not his country, that he cannot find "a decent job," and he is "unable to flourish with his wife as a family" because of her immigration problems. The applicant's husband indicates that this situation has caused him "a nervous breakdown and emotional instability." In a declaration dated March 30, 2011, the applicant's husband asserts that he needs to return to the United States to rejoin his parents and family and to continue his engineering studies at [redacted]. The applicant's husband further indicates that it is urgent to secure their safety "due to the imminent threat of the criminal gangs."

Here, the AAO finds that the hardships related to separation and relocation presented in this case do not rise to the level of extreme hardship. The AAO acknowledges that the applicant's spouse would experience emotional difficulties as a result of separation from the applicant and as a result of relocation and separation from his family members, but finds that the evidence does not demonstrate that this hardship is extreme. Other than the applicant's husband's generalized assertion about his desire to rejoin his parents in the United States, the record does not contain evidence specifically

indicating how the separation from his parents is affecting his emotional well-being in such a way that would qualify as extreme. Though the AAO acknowledges the applicant's husband's assertions regarding his emotional instability, it concludes that such statements refer to the consequences of his wife's applicant's immigration situation, not to separation from his parents. The record evidence indicates that the applicant's qualifying relative faces no greater hardship than the unfortunate but common difficulties arising whenever a spouse is denied admission. The Board has long held that the common or typical results of inadmissibility do not constitute extreme hardship, and has listed separation from family members and emotional difficulties as factors considered common rather than extreme.

With regard to the asserted educational hardships to the applicant's husband should he remain in El Salvador, the record does not indicate that the applicant's husband would be unable to pursue a higher-education degree in El Salvador. There is no evidence in the record indicating that the applicant's husband would be unable to enroll in a college or university because of his national origin, citizenship, or immigration status. Also, there is no evidence demonstrating the unavailability of universities in the area where they reside, or that the applicant's husband does not speak or understand Spanish. Nor is there evidence in the record suggesting the unavailability of university degrees taught in the English language, or that universities in El Salvador do not offer engineering degrees.

Regarding country conditions in El Salvador, the AAO notes that other than a generalized assertion regarding safety concerns because of criminal gangs, the applicant's husband does not detail his safety concerns. The applicant did not submit country conditions evidence or statements detailing her husband's concerns in such a way that, when considered in the aggregate with the other asserted hardships, would amount to a finding of extreme hardship. Even were the AAO to take notice of general conditions in El Salvador, the applicant has not demonstrated the extent to which certain conditions would affect her or her husband specifically.

Therefore, based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under sections 212(h) of the Act. As the applicant has not established statutory eligibility, we need not address whether she warrants a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility rests 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.