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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 14 2013 Office: OAKLAND PARK, FL FILE:

IN RE:

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:

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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Colombia 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident mother and U.S. citizen child.

In a decision, dated March 31, 2012, the field office director concluded that the applicant had failed to establish that his mother would suffer extreme hardship as a result of his inadmissibility. The field office director did not address hardship to the applicant's daughter in his decision. The application was denied accordingly.

On appeal, counsel asserts that the applicant's mother and daughter will suffer extreme hardship as a result of the applicant's inadmissibility. She submits additional hardship evidence on appeal.

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-
>
> . . . .
>
> > (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 applicant's case arises within the jurisdiction of the Eleventh Circuit Court of Appeals, which has recently reaffirmed the traditional categorical approach for determining whether a crime involves moral turpitude. *See Fajardo v. Attorney General,* 659 F.3d 1303, 1310 (11th Cir. 2011) (finding that the Congress intended the traditional categorical or modified categorical approach to be used to determine whether convictions were convictions for crimes involving moral turpitude and declining to follow the "realistic probability approach" put forth by the Attorney General in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)). In its decision, the Eleventh Circuit defined the categorical approach as " 'looking only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions.' " 659 F.3d at 1305 (quoting *Taylor v. United States*, 495 U.S. 575, 600 (1990)). The court indicated, however, that where the statutory definition of a crime includes "conduct that would categorically be grounds for removal as well as conduct that would not, then the record of conviction – i.e., the charging document, plea, verdict, and sentence – may also be considered." 659 F.3d at 1305 (citing *Jaggernauth v. U.S. Att'y Gen.,* 432 F.3d 1346, 1354-55 (11th Cir. 2005)).

The record indicates that on November 22, 2002, the applicant pled guilty in U.S. District Court, Southern District of Florida, Miami Division, to one count of Possessing and Concealing Counterfeit Obligations of the United States under 18 U.S.C. §472. The applicant was sentenced to one year probation and three months home detention. The maximum sentence for the applicant's conviction is 20 years imprisonment.

At the time of the applicant's conviction, 18 U.S.C. §472 provided:

> Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

Matter of P--, *6* I&N Dec. 795 (BIA 1955), held that an alien's conviction for publishing, uttering, and passing counterfeit Federal Reserve Notes with intent to defraud in violation of 18 U.S.C. §265 (now 18 U.S.C. §472) was a conviction for a crime involving moral turpitude. In addition, circuit courts have held that a conviction for possession of counterfeit obligations of the United States with intent to defraud constitutes a conviction for a crime involving moral turpitude. *See Lozano-Giron,* v. *INS,* 506 F.2d 1073 (7th Cir. 1974); *Janvier* v. *U.S.,* 793 F.2d 449 (2d Cir.1986). Thus, we find that the applicant's conviction is for a crime involving moral turpitude and he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother and daughter 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 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 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 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. *Salcido-Salcido v. I.N.S., 138 F.3d 1292 (9th Cir. 1998)*(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, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record of hardship includes: counsel's brief, a copy of the applicant's daughter's birth certificate, medical documentation regarding the applicant's mother, country conditions information, a letter from the applicant's mother, and a letter from the applicant's stepfather.

We note that counsel requests that hardship to the applicant's U.S. citizen daughter be considered on appeal, but the record contains no assertions regarding what hardship the applicant's daughter

would experience as a result of his inadmissibility. Thus, hardship to the applicant's daughter will not be discussed in detail and the applicant has not shown that denial of the present waiver application will result in extreme hardship to her.

The record does indicate that the applicant's mother separated from the applicant when he was 13 years old to pursue economic opportunities in the United States. The applicant lived apart from his mother from the age of 13 years old to 20 years old, when in 1995 he entered the United States without inspection. Then, at the age of 25 years he returned to Colombia, living with an uncle and traveling back and forth from Colombia to the United States. The applicant's mother states that she has nine siblings living in Colombia.

Counsel asserts that the applicant's mother is suffering extreme emotional hardship as a result of separation and would suffer extreme hardship as a result of relocating to Colombia. The record includes psychological evaluations from 2006, 2007, and 2010 stating that the applicant's mother is suffering emotional distress as a result of separation from the applicant. In 2007 she was diagnosed with Major Depressive Disorder and Adjustment Disorder with Mixed Anxiety. The record indicates that the applicant has been residing in Colombia, traveling back and forth to the United States, since 2000. Specifically, the June 2010 psychological evaluation references the applicant being present during his mother's evaluation in Hollywood, Florida.[1] Given the history of the applicant's relationship with his mother, the sporadic timing of the applicant's mother's psychological evaluation, and the lack of a consistent history of treatment or symptoms, we find that these reports are of little probative value. Thus, we find that the applicant has not shown that his mother will suffer extreme hardship as a result of separation.

In regards to relocation, counsel asserts that the applicant's mother's medical problems and the country conditions in Colombia preclude her from relocating. We find that the record does not support counsel's assertions. The record indicates that the applicant's mother suffers from hypertension, high cholesterol, chest pains, fatigue, changes in sleep and appetite, and limitations in her physical activity. We acknowledge that the record includes country conditions information indicating that Colombia is experiencing high levels of violence. We also acknowledge that the U.S. State Department has issued a travel warning for Colombia, dated April 11, 2013. The report states that tens of thousands of U.S. citizens safely visit Colombia each year for tourism, business, university studies, and volunteer work. The report also states that security in Colombia has improved significantly in recent years, but violence linked to narco-trafficking continues to affect some rural areas and parts of large cities. The warning indicates that U.S. citizens should exercise caution and remain vigilant as terrorist and criminal activities remain a threat throughout the country.

Considering the country conditions and the applicant's mother's health together with her family ties in and familiarity with Colombia, the record does not show that someone with her background

---

[1] The record is not clear as to how the applicant has been entering the United States since his entry without inspection, unlawful residence, and 2002 criminal conviction. We note that his actions could subject him to inadmissibilities under section 212(a)(9)(B), section 212(a)(9)(C), and section 212(a)(6)(C)(i) of the Act.

would face extreme hardship or be a target for violence upon relocation. The record also fails to indicate that the applicant's mother would not be able to receive proper medical care in Colombia.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen mother or daughter as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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 proving eligibility remains entirely with the applicant. 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.