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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 2 1 2014 Office: NEW YORK, NY [redacted]

IN RE: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, NY. The matter 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 under 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. The applicant's spouse and two of his children are U.S. citizens, and he has one lawful permanent resident child. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The District Director determined that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the District Director*, dated August 25, 2012.

On appeal, counsel asserts that the director abused her discretion and acted in an arbitrary and capricious manner in failing to give proper weight to the evidence of hardship presented; and she abused her discretion by not granting the waiver as a matter of discretion. *Form I-290B, Notice of Appeal or Motion (Form I-290B)*, filed September 25, 2012.

The record includes, but is not limited to, counsel's brief, a psychological evaluation of the applicant's spouse, untranslated articles in Spanish[1], statements of support, photographs, and information about Colombia. The entire record, other than the untranslated Spanish articles, was reviewed and considered in rendering a decision on the appeal.

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

> Criminal and related grounds. —
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> (A) Conviction of certain crimes. –
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> (i) In general. – Except as provided in clause (ii), any 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
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> . . . .

[1] As the applicant failed to submit certified translations of the documents in Spanish, 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.

> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> . . . .
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> (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....
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> 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 assessing whether a conviction is a crime involving moral turpitude, the adjudicator must first "determine what law, or portion of law, was violated." *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). The adjudicator engages in a categorical inquiry, considering the "inherent nature of the crime as defined by statute and interpreted by the courts," not the underlying facts of the criminal offense. *Matter of Short,* 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States,* 495 U.S. 575, 599-600 (1990)). If the statute "defines a crime in which turpitude necessarily inheres, then the conviction is for a crime involving moral turpitude." *Matter of Short*, *supra*, at 137.

Where the statute includes some offenses involving moral turpitude and some which do not – where there is a *realistic probability, not a theoretical possibility*, that the statute would be applied to conduct not involving moral turpitude – the adjudicator looks to the record of conviction to determine the offense for which the applicant was convicted. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 698 (A.G. 2008) (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where there is an actual prior case, possibly the applicant's own criminal case, in which "the relevant criminal statute was applied to conduct that did not involve moral turpitude."

Matter of Silva-Trevino, *supra*, at 708. The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Matter of Louissant*, *supra,* at 757; *see also Shepard v. U.S.,* 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the "charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented").

The record reflects that on February 1, 2000, the applicant was convicted of conspiracy to defraud the United States in violation of 18 U.S.C. § 371. The applicant was sentenced to time served, three years of supervised release and payment of a fine. As the applicant has not contested his inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

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

> (h) The Attorney General [Secretary of Homeland Security, "Secretary"] 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 [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, in this case the applicant's spouse and children. 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 Igé*, 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 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 will first address hardship to the applicant's spouse and children upon relocation to Colombia. The applicant's spouse, a native of Colombia, states that she and the applicant want to raise their children where there is no fear of being kidnapped and where everyone is treated equally;

she fears the killings, guerillas and drugs in Colombia; and she fears for the safety of her family there.

The psychologist who evaluated the applicant's family states that the applicant's spouse feels depressed and anxious at the thought of losing her job, their house and educational opportunities for their children; their children are U.S. citizens who have not lived in Colombia and would have an extremely difficult time adjusting to the culture; and they would be leaving their friends and family behind.

The psychologist also states that according to the applicant's spouse, her career will suffer as she approaches a potential promotion; she will have to start all over again in Colombia; the family will lose their house as they will not be able to pay the mortgage; and she is fearful as families that return to Colombia from the United States are frequently targets of kidnapping and violence.

The applicant's spouse reported to the psychologist that the children are reacting with much grief and worry; they are afraid that their studies and lives in America will be disrupted; the older son's college education will be interrupted; the possibility of relocation frightens them; the applicant's older son prefers to speak English, does not want to leave his studies, does not want to leave his friends and does not feel safe in Colombia; the applicant's younger son will be leaving behind everything he knows; and the three children are experiencing anxiety, sadness and irritability over the possibility of living in Colombia. The applicant's older son states that he would not enjoy living in Colombia and his family would go through many difficulties there.

Counsel states that country-conditions reports support finding the applicant's family would experience hardship if they were to relocate to Colombia, because they show that violence is perpetrated on civilians by guerilla groups, paramilitary groups, government armed forces and national police; and that Colombia has a poor human-rights record on issues such as child labor, public safety and domestic violence. The record includes country-conditions information for Colombia that details human-rights abuses, including unlawful killings, torture, and violence against women. Moreover, the October 11, 2013 U.S. Department of State Travel Warning for Colombia states that kidnapping is of particular concern in rural areas, and criminal activities remain a threat throughout the country. However, it also claims that there have been no reports of U.S. citizens being targeted specifically because of their nationality.

The record reflects that the applicant's spouse and children would experience some emotional hardship upon relocation to Colombia. However, while Colombia may pose certain general safety issues, the record does not address where the family would reside and whether that area is unsafe. In addition, the record does not include sufficient evidence to establish that the applicant's spouse and children would experience financial hardship in Colombia. Moreover, the record does not include sufficient evidence to establish that the applicant's children would be unable to adapt to living in Colombia because they are accustomed to living in the United States. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon relocation to Colombia.

Concerning the hardship she would experience if she remained in the United States without the applicant, the applicant's spouse states that they have been married since 1999; he supports her emotionally and financially; she has been depressed about the applicant's immigration situation, which affects her ability to work; she worries that she may have to seek government assistance if the applicant cannot provide for the family; their family is very close; their children will have to live without the applicant's paternal guidance and influence, and as a result their children likely will suffer academically and socially.

The applicant's spouse reported to the psychologist that she has worked hard to nurture the applicant and her children and create a sense of peace and harmony within the family; she would not be able to live without the applicant; and her belief that the applicant will face great danger in Colombia terrifies her. The psychologist states that the applicant's spouse complained of insomnia, feeling scared, nervousness, hopelessness and poor appetite. The psychologist diagnosed the applicant's spouse with adjustment disorder with mixed anxious and depressed mood, and states that the applicant's spouse and children will be at high risk for developing more serious psychological and health problems if the applicant is removed from the United States.

To address the emotional hardship the applicant's children would experience in the United States without the applicant, he submits statements from his children and the psychologist's report. The applicant's older son states that the applicant is his role model; he counts on the applicant's support; and he would not be able to continue college without the applicant's financial support. The applicant's younger son states that the applicant is his role model; and he has taught him the importance of not doing drugs and staying in school. The psychologist states that the children cannot conceive of separating from the applicant permanently; the applicant's oldest son considers the applicant to be his best friend; and the younger son is experiencing anger. The psychologist also refers to studies stating that deportation of a parent has a significant negative impact on their children; the applicant's children have been raised in a stable, loving environment; and the three children are experiencing anxiety, sadness and irritability over the possibility of separation from the applicant. The psychologist diagnosed the applicant's children with adjustment disorder with mixed anxious and depressed mood, and they face a high risk of developing more serious psychological problems if the applicant is removed from the United States.

To address the financial hardship his family would experience if they remained in the United States, the applicant submits letters reflecting that the applicant and his spouse are independent contractors with average gross weekly fees of $3,480 and $950 respectively. The applicant's spouse's 2011 Form 1099 reflects nonemployee compensation of $47,097. Her 2011 Form W-2 reflects income of $60,163. The applicant's 2011 Form 1099 reflects nonemployee compensation of $178,377. The applicant and his spouse's 2011 federal tax return reflects total income of $51,788. The record does not include any other evidence of the family's assets or liabilities.

The record reflects that the applicant has a close relationship with his spouse and children, and he plays a significant role in their lives. This is supported by statements of the applicant's spouse, children, and a psychologist. The record reflects that his spouse and children currently have adjustment disorders with mixed anxious and depressed moods, and they are at high risk for

developing more serious emotional problems if the applicant is removed from the United States, according to the psychologist. Moreover, the applicant's spouse would not have the applicant's support in raising their children. She would have to manage their children's psychological issues without the applicant, and this would create for her another level of emotional hardship. The record does not include sufficient evidence to establish that the applicant's qualifying relatives would experience financial hardship without him. However, considering the evidence of hardship presented in the aggregate with the normal results of separation, the AAO finds that the applicant's spouse and children would experience extreme hardship upon remaining in the United States.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.