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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 13 2014 Office: ACCRA, GHANA [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:

SELF-REPRESENTED

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,

Michael Shumway

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ghana 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. The applicant 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 with his U.S. citizen spouse and U.S. citizen child.

In a decision dated February 28, 2011, the field office director denied the Form I-601 application for a waiver, finding that the applicant was statutorily ineligible for a section 212(h) waiver for not having lawfully resided continuously in the United States for a period of not less than seven years immediately preceding the date of initiation of removal proceedings. The director also found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the waiver application accordingly.

On appeal, the applicant asserts that the director erred as a matter of law in finding him statutorily ineligible for a section 212(h) waiver because the record demonstrates that he lawfully resided continuously in the United States for over seven years immediately preceding the initiation of his removal proceeding, which began on or about May 23, 2006. The applicant further asserts that the evidence outlining financial, emotional, and psychological difficulties demonstrates extreme hardship to his U.S. citizen wife and child.

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; the applicant's brief; statements from some of the applicant's family members and friends, including his U.S. citizen wife; copies of federal tax returns filed by the applicant's wife; a copy of the birth certificate of the applicant's U.S. citizen son; documentation regarding civil filings and judgments against the applicant; and documentation regarding the applicant's criminal history.

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 (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.)

The record shows that the applicant was convicted in the United States District Court, Southern District of New York, on January 26, 2004, of aiding in the preparation of false tax returns, in violation of 26 U.S.C. § 7206(2). The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the director.

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 –
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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 . . . .
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> . . .
>
> No waiver shall be provided under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States.

Section 101(a)(43)(M)(i) of the Act, 8 U.S.C. § 1101(a)(43)(M)(i), includes as an aggravated felony an offense that involves fraud or deceit in which the loss to the victim exceeds $10,000. In *Kawashima v. Holder*, the United States Supreme Court noted that the elements of a violation of 26 U.S.C. § 7206(2) include, *inter alia,* that the document in question was false as to a material matter and that the defendant acted willfully. 132 S.Ct. 1166, 1173 (2012). Consequently, the Supreme Court found that the crime of

aiding and assisting in the preparation of a false tax return, in violation of 26 U.S.C. § 7206(2), necessarily entails fraud or deceit within the meaning of section 101(a)(43)(M)(i) of the Act. *Id.*

Having established that the underlying crime categorically involves fraud or deceit under section 101(a)(43)(M)(i) of the Act, the AAO next looks at the facts of the case to assess whether the loss to the victim exceeded $10,000. In *Nijhawan v. Holder*, 129 S.Ct. 2294, 2300 (2009), the Supreme Court found that the $10,000 loss requirement for a fraud or deceit offense to be deemed an aggravated felony calls for a circumstance-specific inquiry, in which the adjudicator may determine the loss amount by examining the alleged facts and circumstances underlying an alien's crime. Here, the documentation of record evidencing a loss amount to the victim is comprised of the applicant's record of conviction. In page four of the "Judgment in a Criminal Case" entered against the applicant, the district court judge ordered the applicant to pay a special assessment of $1,000 and a fine of $7,500 as part of the applicant's special conditions of supervision. Page five of the judgment reveals that the applicant was not ordered to pay restitution to the victim. There is no other evidence in the record from which a loss amount to the victim may be determined. Because the record does not sustain a loss to the victim in excess of $10,000, the AAO cannot find that the applicant's conviction for aiding and abetting in the preparation of false tax returns is an aggravated felony under section 101(a)(43)(M)(i) of the Act.

To be eligible for a section 212(h) waiver, the applicant must demonstrate that he "lawfully resided continuously" in the United States for seven years before the initiation of removal proceedings. The applicant was placed in removal proceedings as of May 23, 2006, when he was served with a Notice to Appear (Form I-862). The record shows that the applicant adjusted his status to that of a lawful permanent resident on September 30, 1997. The director found that the applicant interrupted the continuity of his lawful residence. The record show that the applicant departed the United States on or about October 15, 2003, after having been charged with aiding in the preparation of false tax returns. The record shows that the applicant was paroled into the United States on December 2, 2003, about 48 days after he departed, and was subsequently convicted. We do not need to resolve the continuous residence question at this time. Even assuming that the continuity of the applicant's residence was not broken by his absence, we cannot sustain the appeal because the applicant has failed to demonstrate extreme hardship to a qualifying relative.

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 his admission will impose extreme hardship upon his U.S. citizen wife and child.

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 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 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. *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 asserted hardship factors in this case are the emotional and financial impact to the applicant's wife and child if they remain in the United States without him. The applicant's wife stated in her letter that she has a good relationship with the applicant and that she depends upon him for

emotional and psychological support. She further stated that the applicant was involved in the daily care of their child, as he routinely helped their child with school work, took him to medical appointments, and accompanied him to the playground. Also, the applicant asserted that his wife currently encounters financial hardship as a result of his inadmissibility. However, the assertion of financial hardship to the applicant's wife is not consistent with the submitted tax records for 2007, which show the applicant's wife as the primary source of household income. Moreover, while the record contains additional tax documents and pay stubs, the evidence is not sufficient to establish that the applicant's wife would be unable to support herself or would otherwise experience financial hardship. Going on record without supporting documentation will not 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)). Additionally, though the applicant stated on appeal that his wife and child would suffer financial difficulties if he were denied admission to the United States, the documentary evidence he submitted on appeal does not adequately establish how the denial of admission would affect his family's finances.

The AAO notes that the letter by the applicant's wife, as well as two letters submitted by friends of the family, supports the applicant's assertion that he has a close relationship with his wife and child. However, when considering the emotional and financial hardships collectively, the AAO finds that the applicant has not fully demonstrated that the hardship his wife and child will experience as a result of separation is more than the common result of inadmissibility.

In regard to joining the applicant to live in Ghana, the asserted hardship factors to the applicant's wife and child are poor economic conditions, the difficulty their child would experience in adapting to a different culture, and difficulty in finding employment. Here, the record lacks adequate documentation to support these claims. For instance, the record does not include documentation to support the applicant's claims made pertaining to the economic conditions he and his family will face in Ghana. The record does not contain documentation supporting the applicant's assertion that he and his wife would be unable to find employment in Ghana. Additionally, the record does not include evidence that the applicant's child is integrated into American lifestyle, or of other forms of hardship he would experience if they relocated to Ghana. The record simply does not include sufficient evidence of financial, economic, emotional or other types of hardship, which, in their totality, establish that a qualifying relative would experience extreme hardship upon relocating to Ghana.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's wife and child caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, it is unnecessary to discuss whether he merits a waiver as a matter of discretion.

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.