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

U.S. Citizenship and Immigration Services

DATE: APR 2 2 2013 OFFICE: SANTO DOMINGO 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); section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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, Santo Domingo, Dominican Republic and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad and Tobago. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant was also 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 remain in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the record established the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated December 12, 2011.

On appeal, counsel for the applicant asserts that the applicant has demonstrated rehabilitation, extreme hardship to qualifying relatives, and that she merits a favorable exercise of discretion.

In support of the waiver application and appeal, the applicant submitted a letter, a letter from her spouse, a letter from her son, letters of support, financial documentation, letters from the applicant's spouse's employer, travel documentation from the applicant's spouse, medical documentation concerning the applicant's spouse, background information concerning Trinidad and Tobago, a psychological evaluation of the applicant's spouse and her son, and the applicant's criminal records. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .

> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant was removed from the United States on September 29, 1998. The applicant subsequently entered the United States in February 2000 and was not granted a period of authorized stay. The applicant was again removed from the United States to Trinidad on October 15, 2010. Accordingly, the applicant accrued over one year of unlawful presence in the United States and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility 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-
>
> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
> >
> > (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.)

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 applicant was convicted of false statement in an application for passport pursuant to 18 U.S.C. § 1542 on July 2, 1990 in the The Board of Immigration Appeals has determined that a conviction under 18 U.S.C. § 1542 constitutes a crime involving moral turpitude because fraud and materiality are elements essential to the establishment of the crime. *Matter of B-* ,7 I&N Dec. 342 (BIA 1956). Counsel for the applicant asserts that the applicant simply signed, but did not review a passport application that had been prepared by a fake attorney. However, the applicant pled guilty to an indictment charging her with knowingly and willingly making false statements in a passport application, including her name and place of birth. There is no indication that the applicant's conviction has been overturned. The AAO concurs with the field office director's finding that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i) of the Act for committing a crime involving moral turpitude.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien…

The indictment against the applicant, to which she pled guilty on July 2, 1990, states that the applicant knowingly and willfully stated that she was born in St. Thomas, United States Virgin Islands, in a passport application, with the intent to induce and secure a United States passport for her own use. In knowingly submitting this false information, the applicant made a false claim to U.S. citizenship. The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form 1-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

> In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (l) the false claim was made to

> procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

As the applicant made a false claim to U.S. citizenship prior to September 30, 1996, she is also inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996). As the applicant's waiver application under 212(i) is the most restrictive of the waivers for which he is applying, his appeal will be adjudicated in accordance with this section.

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. *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 applicant is a 54-year-old native and citizen of Trinidad and Tobago. The applicant's spouse is a 50-year-old native of Trinidad and Tobago and citizen of the United States. The applicant currently resides in Trinidad and Tobago and her spouse and child reside in Texas.

Counsel asserts that the applicant's spouse has developed such intense psychological problems due to separation from the applicant that he is not responding to treatment. Counsel further asserts that the applicant's spouse has been presenting difficulties at work and that it is safe to assume that these difficulties could result in a loss of employment. A psychological evaluation of the applicant's spouse states that he is suffering from adjustment disorder with mixed anxiety and depressed mood and includes a recommendation that the applicant's spouse continue with psychotherapy. There is no following medical documentation concerning the applicant's spouse's psychological state, that he is receiving further treatment, or that he is not responding to treatment due to the intensity of his psychological problems. The record contains a letter from the applicant's spouse's employer stating that the applicant's spouse is an A+ employee who has recently become quieter and keeps more to himself. The applicant's spouse's employer also states that the applicant's spouse has been using his time to visit Trinidad and his work production has fallen off and that they are concerned about his safety. There is no statement that the applicant's spouse's present work condition could result in a loss of employment and there is no indication

that termination is being contemplated. In fact, as the applicant's spouse is taking more time off work, it follows that his production numbers would correspondingly fall. There is also no explanation as to why the applicant's spouse's recent tendency to keep to himself would affect his safety at his place of employment.

The applicant's spouse asserts that he is concerned about his son's emotional health in the absence of the applicant and that his schoolwork has been affected by the separation. The record contains a psychological evaluation of the applicant's son stating that he is suffering from adjustment disorder with mixed anxiety and depressed mood and it is recommended that he continue with psychotherapy. The applicant's spouse also asserts that the applicant has two other adult children, one who is bipolar and a burn victim, that need her presence and support. There is no medical evidence in the record concerning any of the applicant's adult children either physically or psychologically. It is also noted that the applicant's children and grandchildren are not qualifying relatives for the purpose of a waiver under section 212(i) of the Act so that any hardship they suffer will be considered only insofar as it affects the applicant's spouse.

Counsel for the applicant asserts that the applicant's spouse is suffering from medical ailments that are exacerbated by his emotional state. The record contains medical documentation stating that the applicant's spouse has developed chest pain, palpitations, severe headaches, and dizziness. The applicant's spouse's physician states that prolonged overstress, low emotional state, and lack of timely medical attention usually causes or worsens these symptoms, but that tests were needed for an accurate diagnosis. The record contains diagnoses of migraine, tension headache, insomnia, and anxiety state for the applicant's spouse. The applicant's spouse also asserts that he has suffered from colon problems and some skin disease and relied upon the applicant to handle his medication and diet for these issues. There is medical documentation indicating a diagnoses for mild psoriasis and microcytosis. It is noted that there is no medical documentation indicating that applicant's spouse's psoriasis or microcytosis have worsened since the applicant's spouse's separation from the applicant.

The applicant's spouse contends that he is experiencing financial hardship because he has to support two households, as the applicant's spouse is residing in Trinidad and Tobago, and he worries about the applicant. The applicant's spouse also asserts that the applicant does not have much family in Trinidad and Tobago, that the country is dangerous, and that she is not receiving proper treatment for her hypothyroidism. It is noted that the U.S. Department of State has not issued travel warnings for Trinidad and Tobago. The record contains a receipt submitted with a handwritten note stating "thyroid pills" and there is no other indication that the applicant's spouse has been unable to receive care for her ailment. In fact, a medical letter in the record from Trinidad and Tobago concerning the applicant indicates her access to medical care. The record contains financial documentation for the applicant's spouse, including evidence of money transfers to the applicant, but there is no indication that he has been unable to meet his financial obligations since the departure of the applicant. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). In the aggregate, there is insufficient evidence

in the record to show that the applicant's spouse is suffering from a level of hardship due to separation from the applicant that is beyond the common results of inadmissibility or removal of a spouse.

The applicant's spouse asserts that he cannot relocate to Trinidad and Tobago to reside with the applicant because he would leave behind his property, family members, and employment in the United States. The applicant's spouse asserts that taking his son along would leave behind his son's education and opportunities in the United States. The applicant's spouse contends that he does not want to expose his son to the dangers of Trinidad and Tobago. As noted, the U.S. Department of State has not issued any travel warnings concerning Trinidad and Tobago. It is also noted that the applicant's spouse is a native of Trinidad and Tobago and his Form G-325A indicates that his parents both reside in that country. The applicant, on her Form G-325A, indicates that both of her parents also reside in Trinidad and Tobago. The record does not contain any letters of support from the applicant's spouse's family members in the United States. It is noted that the record does contain a letter from the applicant's church indicating that she and her family members have been parishioners for years.

Counsel for the applicant contends that the applicant's spouse would face a high unemployment rate in Trinidad and Tobago and the unavailability of certain needed medications. There is no supporting documentation in the record indicating that medications taken by the applicant or her spouse are not available in Trinidad and Tobago. It is noted that the CIA World Factbook indicates an estimate of 6.4% unemployment in Trinidad and Tobago with one of the highest growth rates and per capita incomes in Latin America. It is also noted that the applicant's spouse is an airline mechanic with over a decade of experience in this field and there is no indication that he would be unable to seek gainful employment in Trinidad and Tobago. There is no information concerning the extent to which the applicant's spouse's or the applicant's parents could or would assist with their relocation. In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Trinidad and Tobago, would rise to the level of extreme hardship.

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 her U.S. citizen spouse as required under section 212(i) 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(a)(9)(B)(v), 212(i), and 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. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the

applicant is inadmissible under section 212(a)(9)(B)(i)(II), 212(a)(2)(A)(i)(I), and 212(a)(6)(C)(i) of the Act, no purpose would be served in granting the applicant's Form I-212.

ORDER: The appeal is dismissed.