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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: CHICAGO, ILLINOIS

Date: SEP 02 2009

IN RE:

Applicant:

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania who last entered the United States under his given name, [REDACTED], on July 20, 1990, when he was admitted as a visitor for pleasure. He later legally changed his name to [REDACTED]. He was found to be inadmissible 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 crimes involving moral turpitude (theft, unlawful use of a weapon). The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse, stepchild, and Lawful Permanent Resident mother.

The interim district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of Interim District Director* dated January 13, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) abused its discretion in identifying at least three convictions for theft that do not exist and in counting six of the seven convictions as crimes involving moral turpitude when each falls under an exception. *See Bases for Appeal submitted with Notice of Appeal to the AAO* (Form I-290B). Counsel additionally states that other grounds for appeal were being examined and requested 90 days to submit a brief and/or other evidence to the AAO. As of this date, over three years later, no brief or additional evidence has been submitted. The record is therefore considered complete. In support of the waiver application counsel submitted medical records for the applicant's mother, a letter from the applicant's mother's physician, photographs of the applicant with his family members, income tax returns and W-2 forms for the applicant's wife, and certificates and awards issued to the applicant while he was a high school student in 1991. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(2)(A) of the Act states 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-

(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).

Section 212(h) states in pertinent part:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]his activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 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 record shows that the applicant was convicted of theft in the Circuit Court of Cook County, Illinois on July 1, 1991, on November 25, 1991, and on December 17, 1991. The applicant was also convicted of unlawful use of a weapon and carrying/ possessing a firearm in Cook County, Illinois on August 11, 1998. Since the applicant was convicted of more than one crime involving moral turpitude, he does not qualify for the exception under section 212(a)(2)(A)(ii)(II) for "petty offenses."

In the recently decided *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 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.” *Silva-Trevino*, 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. *Silva-Trevino*, 24 I&N Dec. at 699-704, 708-709. In all such inquiries, the burden is on the alien to establish “clearly and beyond doubt” that he is “not inadmissible.” *Id.* at 709 (citing *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008))

The record for the applicant’s 1998 conviction consists of two certified statements of conviction indicating that the applicant pleaded guilty to unlawful use of a weapon and carrying/ possessing a firearm. No further documentation was submitted, such as an indictment or information, stating which subsections of section 24-1 of the Illinois Criminal Code (720 ILCS 5/24-1) the applicant was charged with violating. Courts have generally found that the crime of carrying a concealed weapon is not a crime involving moral turpitude. *See, e.g. U.S. ex rel. Andreacchi v. Curran*, 38 F.2d 498 (S.D.N.Y. 1926); *Matter of Granados*, 16 I. & N. Dec. 726 (BIA 1976). Carrying or possessing a concealed weapon has been found to be a crime involving moral turpitude where there is intent to use the weapon against another person. *See Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), *modified on other grounds by Matter of Khourn*, 21 I&N Dec. 1041 (BIA 1997); *Matter of Granados*, 16 I&N Dec. 726 (BIA 1979); *Matter of S-*, 8 I&N Dec. 344 (BIA 1959). The AAO notes that section 24-1 of the Illinois Criminal Code is violated by either carrying or possessing a concealed weapon or by carrying or possessing certain dangerous or deadly weapons with the intent to use unlawfully against another. Thus, based solely on the statutory language, it appears that section 24-1 of the Illinois Criminal Code encompasses conduct that involves moral turpitude and conduct that does not.

The documentation submitted by the applicant related to his conviction is inconclusive as to whether he was convicted of violating a subsection of 720 ILCS 5/24-1 that involves moral turpitude. Because *Matter of Silva-Trevino* was decided after the applicant submitted the present appeal, the AAO provided the applicant an opportunity to submit additional documentation such as an indictment, judgment of conviction, jury instructions, a signed guilty plea, or plea transcript, or other evidence deemed necessary or appropriate to resolve accurately whether he was convicted of conduct not involving moral turpitude. Neither the applicant nor counsel for the applicant responded to the request for further documentation. The AAO must therefore determine, based on the documentation on the record, that the applicant’s conviction under section 24-1 of the Illinois Criminal Code for Unlawful Use of a Weapon is for a crime involving moral turpitude. The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and since a period of less than fifteen years has passed since the conduct for which he was last convicted, he is not eligible for a waiver under section 212(h)(1)(A) of the Act, but may seek a waiver under section 212(h)(1)(B) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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. The BIA has further stated:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-eight year-old native and citizen of Romania who has resided in the United States since 1990, when he entered the country as a visitor. The applicant's wife is a forty year-old native and citizen of the United States whom the applicant

married on September 22, 1997. The applicant and his wife currently reside in Des Plaines, Illinois with her daughter and the applicant's mother, a fifty-five year-old native and citizen of Romania and Lawful Permanent Resident.

Counsel for the applicant states that the applicant's mother suffers from medical conditions that require the applicant "to constantly monitor [REDACTED] health and provide her with help in everyday functions." *See Counsel's Statement in Support of Waiver Application* at 4. In support of this assertion counsel submitted medical records and a letter from the applicant's mother's physician. The letter states that the applicant's mother has been under the doctor's care for about seven years and was diagnosed with Hepatitis C with an enlarged liver. *See letter from [REDACTED]*, dated August 22, 2003. [REDACTED] states that the applicant's mother's condition has no cure and has caused her to become highly allergic to different types of food and to everyday products including some lotions and latex products. *Letter from [REDACTED]* Further, the applicant's mother underwent two rotator cuff surgeries due to injuries to both her shoulders and is "limited in the extent of physical exertion" and relies of the assistance of others, primarily the applicant and his spouse, to complete routine tasks. *Letter from [REDACTED]* Dr. [REDACTED] states, [REDACTED] is in constant need of assistance with even the most mundane tasks and is in constant need of evaluation of the various medical conditions afflicting her . . .". The record further indicates that the applicant's mother is no longer married to his father and the applicant is her only child. *See Request for Asylum in the United States (Form I-589)* submitted by [REDACTED]

It appears that the applicant's mother relies on him for daily assistance due to her medical conditions and that she does not have other family members to provide assistance. The physical hardship caused by loss of his daily support and assistance combined with the emotional hardship resulting from separation from her only child would cause the applicant's mother to suffer hardship beyond the common results of deportation and would amount to extreme hardship if she remained in the United States without the applicant. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). No claim was made, however, that the applicant's mother would suffer extreme hardship if she relocated to Romania with the applicant and no evidence was submitted to indicate that she would experience such hardship. Therefore, the AAO cannot make a determination of whether the applicant's mother would suffer extreme hardship if she moved to Romania.

Counsel asserts that denial of admission to the applicant would result in extreme hardship to his wife and stepdaughter "financially, emotionally, and psychologically" because they are a close-knit family. *See Counsel's Statement in Support of Waiver Application* at 4. He further states that the applicant's wife and stepdaughter "would not be able to manage their own lives without the support of the Applicant. *Id.* No evidence was submitted concerning potential hardship to the applicant's spouse or stepdaughter to support this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO further notes that income tax returns and W2 forms indicate that the applicant's spouse is employed and did not file joint income tax returns with the applicant. There is no documentation anywhere on the record indicating that the applicant is employed or has been employed

in the United States and there is no evidence that the applicant's wife or stepdaughter would experience financial hardship if he were removed from the United States.

The record contains copies of photographs of the applicant and his spouse and stepdaughter, but no information or documentation concerning their mental health or the potential emotional effects of separation from the applicant. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse or stepparent's removal or exclusion. Although the depth of their distress over the prospect of being separated from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Based on the evidence on the record, there is no indication that any emotional hardship or other difficulties the applicant's wife and stepdaughter might experience if they remained in the United States without the applicant would be other than the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship). No claim was made that the applicant's spouse or stepdaughter would suffer extreme hardship if they relocated to Romania with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's relatives would suffer extreme hardship if they moved to Romania.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 spouse or stepchild or Lawful Permanent Resident mother as required under section 212(h) of the Act.

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.