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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

U.S. Citizenship and Immigration Services

[redacted]

#2

Date: DEC 0 7 2011 Office: SAN BERNARDINO FILE: [redacted]

IN RE: Applicant [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 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Malaysia 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 crimes involving moral turpitude. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Field Office Director,* dated August 19, 2009.

On appeal, counsel for the applicant asserts that the field office director erred in finding that the applicant's husband will not suffer extreme hardship if the waiver application is denied. *Statement from Counsel on Form I-290B*, dated September 11, 2009.

The record contains, but is not limited to: a brief from counsel; statements from the applicant's husband, the applicant's daughter-in-law, and other individuals; a letter from a physician for the applicant's husband; tax records for the applicant and her husband; documentation in connection with the applicant's and her husband's expenses; and documentation in connection with the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

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 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 record shows that on March 9, 2007 the applicant pled guilty to three counts of fraudulent use of a credit card under California Penal Code § 484g. At the time of the applicant's convictions, California Penal Code § 484g stated:

> Use of card or account information unlawfully altered or obtained; false representation of card ownership
>
> Every person, who with intent to defraud, (a) uses for the purpose of obtaining money, goods, services or anything else of value an access card or access card account information altered, obtained, or retained in violation of Section 484e or 484f or an access card which he or she knows is forged, expired, or revoked, or (b) obtains money, goods, services or anything else of value by representing without the consent of the cardholder that he or she is the holder of an access card or by representing that he or she is the holder of an access card and the card has not in fact been issued, is guilty of theft. If the value of all money, goods, services and other things of value obtained in violation of this section exceeds four hundred dollars ($400) in any consecutive six-month period, then the same shall constitute grand theft.

All offenses under California Penal Code § 484g require an "intent to defraud." Crimes that include as a requirement an intent to defraud have been held, as a general rule, to involve moral turpitude. *Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992). There is ample support that all convictions under California Penal Code § 484g categorically constitute crimes involving moral turpitude. Accordingly, the applicant's conviction under California Penal Code § 484g renders her inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and she requires a waiver under section 212(h) of the Act.

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

> The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

(i) . . . the 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 [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 . . .; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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 husband is the qualifying relative 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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.*, *In re 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).

The record contains a letter from the applicant's husband in which he described his history, working life, and relationships with his prior wives. He explained that he was married four times, but single for 20 years before he met the applicant. He stated that the applicant takes care of him and has turned his life around. He provided that he eats well and has lost weight. He noted that the applicant reminds him to take his medication. He added that he drives an 18-wheeler for work, and the applicant calls to check on him and show affection. He explained that he has spent his entire life working, which he enjoys, and that he intends to work indefinitely.

The record contains a letter from a physician, who attests that he has cared for the applicant's husband since 1995 stated that the applicant's husband suffers from diabetes, insomnia, severe depression, high blood pressure, and morbid obesity. indicated that the applicant's husband requires medical treatments and medication which may be unavailable in Malaysia. He added that the applicant's husband needs the applicant's care on a daily basis. observed that the applicant's husband has a strong emotional tie to the applicant, and that the applicant's removal would have a negative impact on her husband's emotional and physical health.

In a statement dated July 25, 2009, the applicant's daughter-in-law described her close relationship with the applicant's husband. She asserted that the applicant is a loving, caring wife, and that the applicant's removal would be detrimental to the applicant's husband. She added that she is unable to care for the applicant's husband due to her own health problems.

In a brief dated October 9, 2009, counsel notes that the applicant's husband is 68 years old and he suffers from health problems. Counsel asserts that the applicant's husband has three children and close relatives in the United States, yet no contacts in Malaysia. Counsel further contends that the applicant has no family ties to Malaysia. Counsel asserts that the applicant's husband would be unable to support himself financially in Malaysia or to receive proper medical care and medication. Counsel states that the field office director failed to give proper weight to the applicant's husband's age and medical evidence in the record.

Upon review, the applicant has not shown that her husband will suffer extreme hardship should the present waiver application be denied. Counsel asserts that the applicant's husband has serious medical problems. However, the single document in the record to support this assertion is the brief letter from This letter was submitted with the Form I-601 waiver application, and it was previously considered by the field office director. letter is not supported by any further evidence, such as documentation of the applicant's husband's medications, copies of more detailed medical records, evidence and explanation of the applicant's husband's treatment, and an indication of what ongoing care he requires. Although the field office director identified this deficiency in the record in her decision, the applicant has not provided any new evidence on appeal. The AAO values a letter and opinion from a physician, and has carefully reviewed letter, yet it is not sufficient to show that the applicant's husband is facing medical problems that create significant hardship for him.

stated that the applicant's husband requires medication and treatment "which [he] understand[s] are not available in Malaysia." However, statement does not constitute a definitive assertion that the applicant's husband would lack needed medical care in Malaysia. Nor has the applicant submitted any reports on healthcare in Malaysia that would support that her husband would lack quality care. As noted above, the record contains no clear indications of what treatment the applicant's husband requires, such to allow the AAO to assess whether he needs uncommon services.

It is noted that the applicant's husband explained that he has worked his entire life, and he intends to continue to work for an indefinite period. This fact supports that he is able to function independently. The record does not contain sufficient evidence to support the contention that he requires the applicant's assistance.

The AAO acknowledges that the applicant's husband was born in the United States, and he has resided here for most or all of his life. It is evident that he would endure significant challenges should he now relocate to Malaysia, including the loss of access to his employment in the United States, separation from friends and family, and an interruption in his healthcare. The AAO gives due consideration to these difficulties. However, the applicant has only provided general information about her husband's hardship, and the record lacks detail or supporting documentation to allow the

AAO to fully assess the impact residence in Malaysia would have on him. While counsel asserts that the applicant has no family ties in Malaysia, the applicant last entered the United States on February 7, 2003, and her visa was issued in These facts suggest that she continues to have ties to Malaysia, and she has not asserted otherwise. 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 Obaigbena*, 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). It is understood that the applicant's husband would endure significant challenges should he relocate to Malaysia, but the record does not contain adequate explanation or documentation to distinguish his hardship from that which is commonly experienced when individuals relocate abroad due to the inadmissibility of a spouse.

The applicant has not shown that her husband will suffer extreme hardship should he remain in the United States without her. The applicant has not asserted that her husband will endure financial difficulty should she reside outside the United States and he remain. The AAO has examined all financial documents that are part of the record, yet there is no indication that he faces uncommon expenses that he is unable to meet without assistance.

While the applicant has not indicated the location of her husband's relatives, or otherwise described the frequency or nature of his contact with friends and family, the record suggests that he has the emotional support of other individuals. It is evident that the applicant's husband would face significant emotional difficulty should he reside apart from the applicant. noted that the applicant's husband suffers from "severe depression". However, the record contains no indication that the applicant's husband has sought or required treatment for mental health problems. As discussed above, letter is brief and not sufficiently detailed to establish the nature and severity of the applicant's husband's health problems, including mental health. Thus, the applicant has not shown that her husband will face psychological hardship that can be distinguished from the common consequences of residing apart from a spouse.

All stated elements of hardship have been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will suffer extreme hardship, whether he relocates to Malaysia to maintain family unity or remains in the United States without the applicant. Accordingly, the applicant has not shown that denial of her waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(h) of the Act. Therefore, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.