



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

H2

DATE: DEC 19 2012

OFFICE: SAN BERNARDINO, CA

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 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 with the field office or service center that originally decided your case by filing a 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, 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 Mexico 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 in order to remain in the United States with his U.S. citizen spouse and his adult daughter from a prior relationship.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, dated May 3, 2011.

On appeal counsel asserts that evidence already in the record and that submitted on appeal establish extreme hardship to the applicant's U.S. citizen spouse. *See Form I-290B, Notice of Appeal or Motion*, received June 1, 2011.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; a hardship affidavit; medical records; mortgage and billing statements; tax, wage and employment records; a real estate school letter; birth and marriage certificates and family photos; documents related to the applicant's removal proceedings; and the applicant's criminal record. The entire record was reviewed and considered in rendering this decision on the 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 record shows that the applicant has an extensive criminal record extending over more than 20 years of his adult life from his first arrest to the completion of his most recent sentence. The applicant was convicted on June 20, 1986 for Forgery, in violation of California Penal Code (CPC) section 470, for his conduct on or about June 16, 1986. He was sentenced to two years of probation and three days in jail. The applicant was arrested on December 11, 1986 and charged with Assault with a Deadly Weapon, in violation of CPC section 245(A). The record shows, however, that the Pasadena Superior Court only retains misdemeanor records for five years and felony records for 10 years and thus, records concerning this arrest and any subsequent conviction have been destroyed. The applicant was convicted on May 26, 1992 for Inflicting Corporal Injury on a Spouse or Cohabitant, in violation of CPC section 273.5(A), for his conduct on or about June 28, 1991. He was sentenced to 24 months of probation and 15 days in jail. On March 11, 1993 the applicant was called for a possible probation violation and when he failed to appear at his hearing on December 1, 1993 and his probation was revoked. The applicant was charged on March 1, 1993 for Inflicting Corporal Injury on a Spouse or Cohabitant, in violation of CPC section 273(A), for his conduct on or about March 7, 1993, which was in addition to a violation of criminal law, a violation of his probation for the same offense. On November 17, 1993 the applicant was sentenced to a court-ordered diversion program for a period of two years. On December 1, 1993 the court terminated diversion and reinstated criminal proceedings against him. On August 4, 1994 the case was called for a diversion hearing to be held on February 7, 1995. When the applicant failed to appear on February 7, 1995 criminal proceedings were reinstated. On April 10, 1995 the applicant admitted to violating his probation, pled nolo contendere, and was convicted for Battery, in violation of CPC 242, for his conduct against Rosinda Trejo, the mother of his daughter. The applicant was sentenced to one year of probation and three days in jail. The applicant was convicted on June 17, 1997 for Inflicting Corporal Injury on a Spouse or Cohabitant, in violation of CPC section 273.5(A) and Preventing/Dissuading a Witness, Etc., from Reporting, in violation of CPC section 136.1(B)(1), for his conduct on or about June 3, 1997. The applicant was sentenced to three years formal probation, 180 days in jail, and restitution. The applicant was convicted on August 1, 2002 for Vandalism, in violation of CPC section 594(A), for his conduct on or about December 14, 2001. He was sentenced to three years of formal probation and 10 days in jail. When the applicant failed to appear at a consideration hearing on November 7, 2002 his probation was revoked. On October 16, 2007 the applicant admitted in court to violating his most recent probation. The court modified its probation order and the applicant was sentenced to serve 45 days in jail and make restitution to the victim.

Based on his criminal convictions, the applicant was found to have been convicted of crimes involving moral turpitude that render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

He does not contest this finding on appeal, and he 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.

The applicant's most recent conviction for a crime involving moral turpitude occurred on June 17, 1997 when he was convicted for the third time of inflicting corporal injury on a spouse or cohabitant. As his culpable conduct took place more than 15 years ago, the applicant meets the threshold requirement for consideration under section 212(h)(1)(A)(i) of the Act. However, the applicant has not established by a preponderance of the evidence that he has been rehabilitated over the last 15 years. More than five years after the applicant's June 1997 conviction, he was convicted in August 2002 for vandalism and sentenced to jail time and several years of probation, which he violated that resulted in the revocation of his probation. As recently as October 2007 the applicant admitted in criminal court that he violated the court's probation order and he was sentenced to serve an additional 45 days in jail and make restitution to his victim. Thus, the record shows that

the applicant has continued to engage in criminal activity since his June 1997 conviction. The record contains no expressions of remorse by the applicant for his criminal, violent and dangerous conduct spanning more than 20 years over the course of his adult life, or showing that he has sought to rehabilitate himself or has been rehabilitated. On account of his reckless disregard for the laws of the United States and his long history of inflicting bodily harm and violence on others, the record reflects that admitting the applicant would constitute a risk to the safety of others in the United States. Based on the foregoing, the applicant has not shown that he is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act. A waiver under section 212(h)(1)(B) will still be considered.

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 or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's U.S. citizen spouse and daughter are qualifying relatives. 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of 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 record contains no assertions of hardship to the applicant’s adult daughter from a previous relationship and no documentary evidence suggesting any such claim. Accordingly, the AAO cannot and will not speculate in this regard.

The applicant’s spouse is a 51-year-old native and citizen of the United States who has been married to the applicant since June 2001. She states that she would be lost without the applicant and her life would be totally disrupted. The applicant’s spouse asserts that she and the applicant have been together for 20 years, her family is very close and she is under an immense amount of stress knowing that his residency is in danger. Physician’s Assistant (PA), [REDACTED], writes that the applicant’s spouse presented on May 18, 2011 with complaints of stress that started four years ago but worsened the past week and has been very emotional with mood swings, disturbed sleep, feelings of fatigue and difficulty concentrating. PA [REDACTED] diagnoses the applicant’s spouse with depression and stress reaction, acute and directs her to take Celexa. PA [REDACTED] adds that a variety of blood tests were ordered for the applicant’s spouse who should return to the clinic if symptoms worsen and follow up in three weeks. The record contains no blood test results or evidence that the applicant’s spouse followed-up in any manner.

The applicant’s spouse writes that she relies on the applicant for moral and financial support while she continues her education at night school, and that she could not survive without his contribution to their household. She adds that as economic opportunities in Mexico are limited, she would

have to support the applicant there in the event of his removal. The applicant's spouse states that it would be costly to visit her husband in Mexico where airfare is about \$450 and she would have to take time off work and from pursuing her education and career goals. Corroborating documentary evidence has not been submitted regarding the cost of travel to Mexico or showing that the applicant's spouse would not be compensated or would suffer other harm were she to take time off work. The most recent tax return and wage/income documents submitted for the record are for tax year 2009 and show that the applicant and his spouse each earn roughly an equal portion of their total income. The applicant's spouse writes on March 30, 2011 that she has been working for Sierra Vista Rehabilitation House Center for eight months, but no corroborating evidence has been submitted. It has not been explained or documented whether this position is in addition to her other employment or in place thereof, and no updated documentary evidence has been submitted to demonstrate the current income of both the applicant and his spouse from which an accurate economic determination might be made. While the record contains billing statements for a mortgage, two car payments and other expenses, the evidence in the record is insufficient to show that the applicant's spouse would be unable to support herself in the applicant's absence. Going on record without supporting documentation is not sufficient to 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)).

The AAO acknowledges that separation from the applicant would cause various difficulties for his U.S. citizen spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that her roots are in the United States, her immediate family resides here legally, and she would have to abandon her U.S. citizen brother, aunt, uncle and cousins, as well as her adult son from a prior relationship were she to join the applicant in Mexico. Counsel contends that the applicant "is aware of unfavorable country conditions" in Mexico including a high crime rate and unsafe street conditions. The record contains no country conditions reports for Mexico or other documentary evidence demonstrating conditions in Mexico of any kind. Counsel further asserts that neither the applicant nor his spouse would be able to secure employment due to Mexico's job market, and that the spouse would be at a disadvantage because she would first need to obtain work authorization to work legally. No corroborating evidence has been submitted concerning these claims. Counsel states that the "evidence accompanying this appeal demonstrates that the level of unemployment in Mexico reached extremely high levels," but the evidence to which counsel refers is unknown. Counsel maintains that the applicant and his spouse would live in constant fear of contracting an extremely dangerous disease, but again corroboration has not been submitted. The applicant's spouse writes that going to Mexico would be like a death sentence for her as there is a narco-war raging and her husband's home state of Ensenada has become especially violent. She adds that a crime wave is happening in Mexico and the country has become an extremely violent place. Although the record contains no corroborating documentary evidence, the AAO has reviewed the U.S. State Department's most recent *Mexico Travel Warning*, dated November 20, 2012, which notes that while the Mexican government makes a considerable effort to protect U.S. citizens and there is no evidence that Transnational Criminal Organizations (TCOs) have targeted U.S. visitors and

residents based on their nationality, gun battles between rival TCOs or with Mexican authorities have taken place in towns and cities, especially in the border region, the number of kidnappings and disappearances throughout Mexico is of particular concern, and carjacking and highway robbery are serious problems in many parts of the border region. While many states and cities in Mexico are specifically singled out, no such warnings are noted for Ensenada.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including her adjustment to a country in which it appears she has not resided; that she was born and raised in the United States where she enjoys close family and community ties; her employment and night school classes in the United States and goals to advance; and stated economic, employment, health-related and safety concerns regarding Mexico. While not insignificant, when considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative, and he is statutorily ineligible for a waiver under section 212(h) of the Act.

The AAO notes, however, that even had extreme hardship been established, the waiver application would have been denied in the exercise of discretion as a result of the applicant's extensive criminal record spanning over more than two decades and including multiple convictions for violent crimes involving the battery and physical injury of others. As noted above, the applicant has not expressed remorse for his conduct or shown that he has been rehabilitated, and instead has admitted in criminal court to violating his probation as recently as October 2007. Based on the foregoing, as the record is currently constituted, the applicant would not merit a favorable exercise of discretion even had he established extreme hardship to his qualifying relative spouse.

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.