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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: FEB 0 2 2012 Office: CHICAGO, IL FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. §1182(h).

ON BEHALF OF APPLICANT:

[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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States without admission on or around May 11, 1997. The applicant has not departed the United States since that time. The applicant has a U.S. citizen wife, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He filed a Form I-485, Application to Register Permanent Residence or Adjust Status on March 28, 2007. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. §1182(h), in order to live in the United States with his wife.

In a decision dated August 11, 2009, the director concluded the applicant had failed to establish that a qualifying relative would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant has appealed the denial of his Form I-601. Counsel does not contest that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Counsel asserts, however, that the cumulative hardship factors in the applicant's case establish the applicant's wife will experience extreme emotional, physical, and financial hardship if the applicant is denied admission into the United States. In support of these assertions counsel submits a letter written by the applicant's wife, as well as medical documents and financial income and expense documentation.

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act states in pertinent part:

> (2) Criminal and related grounds.-
>
> > (A) Conviction of certain crimes.-
> >
> > > (i) In general.-Except as provided in clause (ii), any 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.

In the present matter the record contains court disposition evidence reflecting that on August 3, 2001, the applicant was convicted in the of the offense of Forgery. The applicant was sentenced to twelve months' probation.

The Board of Immigration Appeals has stated:

> [I]n 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).

Matter of Perez-Contreras, 20 I&N Dec. 615, 617-18 (BIA 1992). In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a 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." *Matter of 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. *Matter of Silva-Trevino,* 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. Finally, 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 court disposition evidence contained in the record reflects that on August 3, 2001, the applicant was convicted of the offense of Forgery, in violation of 720 Illinois Compiled Statutes (ILCS) 5/17-3(a)(2). The applicant was sentenced to a period of twelve month's probation.

720 ILCS section 5/17-3 defines the crime of "Forgery" in pertinent part, in the following manner:

> Sec. 17-3 Forgery
>
> a) A person commits forgery when, with intent to defraud, he or she knowingly:
> 1) Makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority; or
> 2) Issues or delivers such document knowing it to have been thus made or altered. . . .
>
> d) Sentence.
> 1) Except as provided in paragraphs (2) and (3), forgery is a Class 3 felony.

Forgery has been held to be a crime involving moral turpitude. *See Matter of Seda,* 17 I&N Dec. 550 (BIA 1980). Moreover, counsel does not dispute that the applicant's conviction for Forgery is a crime involving moral turpitude. It is further noted that an intent to defraud applies to all the subparts of 720 ILCS section 5/17-3(a). Accordingly, a conviction under this section of law categorically applies to conduct involving moral turpitude. The applicant is therefore inadmissible under § 212(a)(2)(A)(i)(I) of the Act based on his Forgery conviction.

Under the exception clause contained in section 212(a)(2)(A)(ii)(II) of the Act, inadmissibility shall not apply to an alien who has been convicted of only one crime, if the maximum penalty possible for the crime of which the alien was convicted 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).

Under 720 ILCS 5/17-3(a)(2), Forgery is a Class 3 felony. The sentence of imprisonment for a Class 3 felony, "shall be a determinate sentence of not less than 2 years and not more than 5 years." *See* 730 ILCS 5/5-4.5-40(a). Because the maximum imprisonment term for the crime of Forgery is over one year, the applicant fails to qualify for the exception contained in section 212(a)(2)(A)(ii)(II) of the Act.[1]

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[1] It is noted that the applicant's initial Form I-601 application asserted that he qualified for the exception contained in section 212(a)(2)(A)(ii)(II) of the Act. Counsel did not make this assertion on appeal. The AAO notes further that the exception contained in section 212(a)(2)(A)(ii)(I) of the Act does not apply in the present case, as the applicant was over the age of 18 when the crime was committed.

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

> The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if –
>
> . . .
>
> (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 reflects that the applicant is married to a U.S. citizen. The applicant's wife is a qualifying relative for section 212(h) of the Act, waiver of inadmissibility purposes.

Section 212(h) of the Act provides that a waiver of the bar to admission 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).

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,* 22 I&N Dec. 560, 565 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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 BIA 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.

In the present matter, the record contains affidavits written by the applicant and his wife reflecting that they have been married since 1999. The affidavits reflect that the applicant's wife was born and raised in the U.S. and that she is very close to her older brother. The applicant's wife indicates that she works as a clinical technician and that she is also a certified nurse assistant. She and the applicant both work, and she indicates that her husband's salary from landscaping is higher than hers, and that his salary pays the bulk of their bills and expenses. The applicant's wife states that she has been unable to have children due to fertility problems, and she has received fertility treatments off and on through her health insurance. She currently is not receiving fertility treatment due to undesirable side effects; however, the applicant's wife wishes to resume treatment in the future and she states she would be unable to do so in Mexico. The affidavits state that the applicant is from a small farming village in Michoacan, and that people in his village live below the poverty level and have no potable or running water or indoor plumbing. The affidavits indicate that there are also no medical facilities in the applicant's native village of [redacted] and that the nearest facility is about an hour away. They additionally indicate that

there is no employment in the applicant's village in Mexico, and that most villagers subsist on farming and herding. The record contains medical records for the applicant's wife reflecting that she has health insurance and that she has been seen for fertility-related issues. In addition, the record contains utility, auto and insurance payment evidence and joint federal tax return evidence.

The AAO finds that the evidence in the record fails to show that the hardship faced by the applicant's wife, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship.

The record contains no documentary evidence to corroborate the assertion that the applicant's wife would experience emotional hardship beyond that normally experienced upon removal or inadmissibility if she remained in the U.S. or if she moved to Mexico to be with the applicant. The record also does not reflect that the applicant's wife suffers from a serious medical ailment, or that she would experience extreme physical hardship if she remained in the U.S., or moved to Mexico with the applicant. It is noted that the applicant's wife is not currently receiving fertility treatments in the U.S. Moreover, the record lacks documentary evidence to corroborate the assertion that she would be unable to obtain fertility, or other medical care and treatment in Mexico. The federal tax return and the expense evidence contained in the record fails to establish or corroborate the claim that the applicant is the primary financial supporter in the family, or that the applicant's wife would suffer extreme financial hardship in the U.S. if she was unable to rely on the applicant's financial contributions. The record also contains no documentary evidence to corroborate the assertions that the applicant and his wife would be unable to find work near the applicant's village or elsewhere in Mexico, or that they would live in poverty in Mexico.

Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized. The fact remains, however, that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or relocation nearly always results in considerable hardship to individuals and families, 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, and

thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish extreme hardship to a qualifying relative, as required under section 212(h) 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 an application for waiver of grounds of inadmissibility under section 212(h) 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 Form I-601 appeal will be dismissed.

ORDER: The appeal is dismissed.