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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: FEB 06 2012 OFFICE: LOS ANGELES, CALIFORNIA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(h), 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Mexico, was found inadmissible under INA § 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), based on his convictions for crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(h), 8 U.S.C. § 1182(h), based on extreme hardship to his U.S. citizen wife, children, and mother.

On June 2, 2009, the Field Office Director concluded that the hardship that the applicant's U.S. citizen wife and children would suffer did not rise to the level of extreme as required by the statute.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility but states that the hardship that the applicant's U.S. citizen wife would suffer is extreme.

In support of the waiver application, the record includes, but is not limited to, a brief by the applicant's attorney, medical records for the applicant, medical records for the applicant's wife, letters from the applicant's wife, financial and employment documentation for the applicant and his wife, biographical documentation for the applicant's wife and children, health care documentation for the applicant, his wife, and children, documentation of the applicant's children's education, and records concerning the applicant's immigration and criminal history in the United States.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal. The AAO will first address the question of whether the applicant is admissible to the United States.

The Field Office Director found the applicant to be inadmissible under INA § 212(a)(2), which provides, in pertinent part:

> (A)(i) 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, or...
> is inadmissible.

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)).

The record illustrates that the applicant's first conviction under California Penal Code (Cal. Penal Code) § 273.5(a), Corporal Injury to Spouse occurred on September 1, 1998 in the Municipal Court of Los Angeles. The applicant was placed on probation for 36 months and was given a sentence of 30 days in jail, suspended, in addition to being ordered to pay restitution and attend a batterer's counseling program. On March 20, 2001, the applicant was again convicted under Cal. Penal Code § 273.5(a), Corporal Injury to Spouse, in addition to being convicted under Cal. Penal Code § 373A(B), Willful Cruelty to a Child. As a result of these convictions, the applicant was placed on summary probation for 36 months, was sentenced to 60 days in jail, suspended, and was ordered to pay restitution and court costs. He was also ordered to complete a domestic violence counseling program and parenting classes, in addition to other conditions.

Cal. Penal Code § 273.5(a) provides:

> (a) Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000) or by both that fine and imprisonment.

The Ninth Circuit Court of Appeals has held that a conviction under Cal. Penal Code § 273.5(A) is categorically a crime involving moral turpitude. In *Grageda v. INS*, the Ninth Circuit held, "[b]ecause spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements . . . spousal abuse under section 273.5(a) is a crime of moral turpitude." 12 F.3d 919, 922 (9th Cir. 1993). As the applicant's convictions for corporal injury to

spouse are crimes involving moral turpitude, we need not determine whether his conviction for Willful Cruelty to a Child is also a crime involving moral turpitude.

The AAO finds that the applicant's multiple convictions for crimes involving moral turpitude render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant has not presented any arguments that his convictions are not crimes involving moral turpitude and does not contest this finding. As the applicant has been convicted of two crimes involving moral turpitude, he is not eligible for the petty offense exception at INA § 212(a)(2)(A)(ii).

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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 [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 . . . .

The activities for which the applicant was last convicted occurred on March 20, 2001, within the past 15 years; as such section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's U.S. citizen spouse and children. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, it is then assessed whether an exercise of discretion is warranted. However, even if the applicant were to meet the requirements of section 212(h)(1)(A), the AAO notes the applicant's conviction under Cal. Penal Code § 273.5(a), Corporal Injury to Spouse, is a conviction for a violent or dangerous crime requiring that the applicant meet the heightened discretionary standard of exceptional and extremely unusual hardship under 8 C.F.R. § 212.7(d). *See* 8 C.F.R. § 212.7(d). The applicant has not addressed this issue or the heightened standard.

In regards to discretion, the regulation at 8 C.F.R. § 212.7(d) states:

> The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an

> immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

As stated, the applicant was convicted on March 20, 2001 and on December 19, 2004 of willful infliction of corporal injury on his spouse in violation of Cal. Penal Code § 273.5(a).

From the plain language of Cal. Penal Code § 273.5(a), it can be concluded that the applicant has been convicted of a violent crime pursuant to 8 C.F.R. § 212.7(d). Therefore, even if the applicant satisfied the extreme hardship requirement of section 212(h)(1)(B) of the Act, he would still be subject to the heightened hardship requirement of showing exceptional and extremely unusual hardship to warrant a favorable exercise of discretion under section 212(h)(2) of the Act. We will not consider whether the applicant meets this heightened standard, unless he first illustrates that a qualifying family member will experience extreme hardship as set forth at 212(h)(1)(B).

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.

We will first consider the hardship claimed by the applicant's qualifying relatives if they were to remain in the United States without the applicant. In a letter dated January 21, 2009, the applicant's spouse states that her and her children's lives will be destroyed if the applicant is not able to remain in the United States. In particular, she states that she is not able to work because of an accident that she suffered on the job in 2005. Although the applicant provided a doctor's letter dated July 20, 2005 stating that his spouse is "totally disabled" due to an injury suffered in 2005, another doctor's letter dated January 6, 2009, does not state that the applicant's spouse remains disabled and unable to work as of the time of the appeal in 2009. The 2009 physician's letter states that the applicant's spouse suffers from depression, hypertension, diabetes, thyroid, and gastro-intestinal problems. The physician's letter does not indicate, however, the role that the applicant plays in assisting his spouse or the effect that his inadmissibility would have on her illnesses. It is not possible from the evidence of record to make a conclusion that the applicant's spouse remains unable to work or that her medical conditions would be exacerbated by the applicant's inability to obtain permanent residence in the United States. Moreover, it is not possible to discern the applicant's current diagnosis from the medical documents submitted. The records indicate the dates of admission to the hospital by the applicant, but there is no diagnosis or prognosis given. The applicant has also submitted school records for his children, but there is no indication in the record that the applicant's children will not be able to continue their schooling if the applicant does not remain in the United States. The AAO recognizes the impact of family

separation on children; however, the applicant has not provided any independent evidence of any special needs that his children may have or of the role he plays in his children's lives through letters or reports from teachers, health professionals, or other community members. The applicant has not provided an assessment from a qualified professional of the emotional impact that separation may have on his children.

The record contains letters from the applicant, his spouse, and his step-daughter about the applicant's moral character, remorse, and the length of time that he has resided in the United States. Additionally, there is indication in the record that the applicant received medical attention in 2009. Hardship to the applicant and his moral character, however, are not relevant unless they specifically affect the hardship to the applicant's qualifying relatives. References to the applicant's moral character may be relevant to a discretionary determination, but we do not reach that determination unless extreme hardship has been established.

As to whether the applicant's qualifying relatives would suffer extreme hardship if they were to relocate to Mexico to reside with the applicant, the applicant did not provide any documentation concerning any claimed hardship that his spouse and children would face in Mexico or regarding the country conditions in Mexico. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant's qualifying relatives would specifically be affected by any adverse conditions there. It is not clear from the record whether the applicant's spouse's medical conditions are treatable in Mexico. Additionally, the record does not indicate that the applicant's children could not obtain an education in Mexico. Accordingly, the record does not show that relocation to Mexico would cause extreme hardship to the applicant's spouse or children. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66.

In sum, although the record indicates that the applicant's spouse and children will experience some hardships should the applicant not be granted a waiver of inadmissibility, but there is not enough documentary evidence to illustrate that those hardships, considered in the aggregate, rise to the level of extreme beyond the common results of removal. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Perez,* 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch,* 21 I&N Dec. at 631.

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. 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.