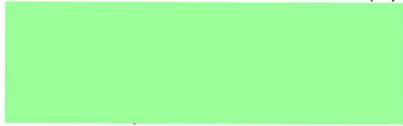


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



(b)(6)



DATE:

APR 03 2013

OFFICE: DENVER, COLORADO

File:

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:



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, Denver, Colorado 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 under section 212(h) in order to remain in the United States with his U.S. citizen spouse.<sup>1</sup>

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 November 14, 2011.

On appeal counsel asserts that the applicant has established that his U.S. citizen spouse will suffer extreme hardship of an economic, emotional/psychological, and country conditions-related nature if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received December 16, 2011.

The record contains, but is not limited to: Form I-290B, counsel's appeal brief and earlier letter in support of a waiver; various immigration applications and petitions; a hardship affidavit; a psychotherapist's evaluation; death, birth and marriage certificates and family photos; country-conditions documents for Mexico; numerous letters of support, concern and character reference; school transcripts; financial records; and documents pertaining to 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-

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<sup>1</sup> While the field office director does not make an explicit finding that the applicant is additionally inadmissible under section 212(a)(9)(B)(i)(II) of the Act, she discusses the requirements for an unlawful presence waiver under section 212(a)(9)(B)(v) of the Act and states that the applicant has accumulated "over nine years of unlawful presence in the United States." The AAO notes that as the applicant does not appear to have ever departed the United States since entering on a valid B-2 visa on August 29, 2002 he has not triggered the unlawful presence bar, is not inadmissible under section 212(a)(9)(B)(i)(II), and does not require a waiver under section 212(a)(9)(B)(v) of the Act.

(b)(6)

(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 reflects that the applicant was convicted in [REDACTED] on March 28, 2005 of Criminal Possession of a Forged Instrument, in violation of C.R.S. § 18-5-105, a Class 6 Felony, for his conduct on or about September 26, 2004.<sup>2</sup> The applicant was sentenced to two years deferred judgment, a \$1,200.00 probation supervision fee, and 48 hours of community service.

At the time of the applicant’s conviction, C.R.S. § 18-5-105 stated, in pertinent part:

A person commits a class 6 felony when, with knowledge that it is forged and with intent to use to defraud, such person possesses any forged instrument of a kind described in section 18-5-102.

ANNOTATION: Section requires guilty knowledge and intent to defraud. This crime requires not only possession of the forged or counterfeit instruments with knowledge that they were counterfeit, but also the intent to utter and pass the same with intent to defraud. *People v. Colosacco*, 177 Colo. 219, 493 P.2d 650 (1972) (decided under former § 40-6-4, C.R.S. 1963).

The BIA held in *Matter of Serna*, 20 I&N Dec. 579, 586 (BIA 1992), that simple possession of illegal documents on a first offense is not a crime involving moral turpitude, specifying: “the crime of possession of an altered immigration document with the knowledge that it was altered,

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<sup>2</sup> The field office director appears to conflate C.R.S. § 18-5-113(1)(e) with C.R.S. § 18-5-105 stating that the applicant was convicted of “criminal impersonation to gain a benefit.” The record of conviction shows that while the applicant was initially charged with both criminal impersonation to gain a benefit in violation of C.R.S. § 18-5-113(1)(e) and criminal possession of a forged instrument in violation of C.R.S. § 18-5-105, the criminal impersonation charge (C.R.S. § 18-5-113(e)) was dismissed and the applicant’s only conviction is for criminal possession of a forged instrument (C.R.S. § 18-5-105).

but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude." In the present case, the [REDACTED] statute under which the applicant was convicted requires not only knowledge that the document is forged but the intent to use said document to defraud. The AAO thus finds that the applicant's conviction under C.R.S. § 18-5-105 constitutes a crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. As the maximum sentence exceeds one year imprisonment, the petty offense exception does not apply. The applicant 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 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 is his only qualifying relative. 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 applicant's spouse is a 26-year-old native and citizen of the United States who has been married to the applicant since September 2009. While they currently have no children together, a 2010 joint tax return lists [REDACTED] as "daughter." No further information has been provided concerning the child's age, parentage, or where and with whom she resides.

The applicant's spouse states that without the applicant she would be unable to support herself financially as she is currently a full-time student. She indicates that she is majoring in Sociology and minoring in Spanish, a language she maintains she does not speak or understand. The applicant's spouse explains that the applicant earns most of the money in their home because he knows once she graduates from college she will contribute her share so he can pursue an education and get a better job. She wrote in April 2011 that she had "another year to go" in her studies. The record has not been supplemented to show whether the applicant's spouse has graduated or to demonstrate her current employment and income. It is noted that while a joint 2010 tax return has been submitted, only a single W-2 wage and earnings statement was included showing the applicant's spouse's income. The record contains no documentary evidence demonstrating the applicant's employment, income or financial contribution to the household at any time. 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)).

Counsel asserts that if USCIS questions the credibility or authenticity of economic hardship assertions, "then additional evidence should have been requested." The AAO reminds counsel that the evidentiary burden of establishing that the application merits approval lies entirely with the applicant. On Form I-864 the applicant's spouse indicates that she has been unemployed since February 2011. The reason for her separation from [REDACTED] is not addressed in the record. While it has been asserted that the applicant was the couple's sole provider from February 2011 until an unknown date, the evidence in the record does not corroborate his employment, income or financial contribution to the household and the evidence is insufficient to show that the applicant's spouse would be unable to secure employment and/or support herself in the applicant's absence.

The applicant's spouse describes a difficult life with an emotionally unavailable, alcoholic, Vietnam veteran father and a mother who, before dying when the applicant's spouse was 14-years-old, handed down a poor self-image to her. She writes that she saw a therapist and school counselor after her mother's death, another therapist at 19-years-old when feeling alienated from

her father, and she has been “poor, an addict, and depressed.” No corroborating documentary evidence of past therapy or addiction has been submitted. The applicant’s spouse explains that the thought of losing the applicant tears her apart and she does not want to imagine a life without him. She states that the applicant makes her stronger and is the most beautiful person she has ever met. [REDACTED], an unlicensed psychotherapist, indicates that she interviewed the applicant’s spouse on August 8, 2011 and found her frightened by the idea of being separated from the applicant and feeling hopeless. [REDACTED] relays that the applicant’s spouse will not have peace of mind if the applicant moves to Mexico and speculates that his absence “could potentially” result in a recurrence of earlier trauma related to living at home with her father and sister. While not offering a definitive diagnosis, [REDACTED] states that the applicant’s spouse “shows signs and symptoms of clinical depression recurrent” based on reporting that she has difficulty sleeping, sadness, irritability, problems concentrating, loss of interest in daily activities, lack of motivation, feelings of hopelessness and helplessness and changes in her social functioning. [REDACTED] concludes that the applicant’s spouse “needs additional psychotherapy for a period of 9-12 months minimum in order to provide the support needed to deal with these problems.” The record does not show whether the applicant’s spouse began seeing [REDACTED] or any therapist and is silent as to the current impact of such therapy. While the AAO acknowledges [REDACTED] report and opinion, it notes that they are based on self-reporting during a single interview and she believes psychotherapy would be an effective means of treatment and support.

The AAO recognizes that the applicant’s spouse has experienced significant difficulties in life including her mother’s early death, she deeply loves the applicant with whom she hopes to start a family and improve their employment prospects through education, and separation from him will be a challenge for her. The challenges described, however, are consistent with those expected to be associated with a loved one’s removal or inadmissibility. The AAO acknowledges that separation from the applicant will likely cause various difficulties for the applicant’s spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the applicant’s qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant’s spouse indicates that she was born in and has resided her entire life in the United States, has never lived in nor does she wish to live in Mexico, and she does not currently speak Spanish and is unfamiliar with Mexican culture other than through the applicant. While the applicant’s spouse describes strained relationships with her father and sister, she explains that all of her friends are in the United States, she goes to school here, her life is here, and this country is her home. Affidavits by an aunt and cousin indicate close family ties thereto. The applicant’s spouse states that Mexico is a dangerous country and the applicant’s family resides in [REDACTED] with a very high murder rate. The AAO has reviewed the Mexico country conditions documents submitted for the record and has additionally reviewed the U.S. State Department’s current *Mexico Travel Warning*, dated November 20, 2012. Therein, U.S. citizens are warned that crime and violence are serious problems throughout the country and can occur anywhere. U.S. citizens have fallen victim to transnational criminal organization activity including homicide, gun battles, kidnapping, carjacking and highway robbery, and the number of kidnappings and disappearances throughout Mexico is of particular concern. The State

Department warns that U.S. citizens should defer non-essential travel to

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including her adjustment to a country and culture so different from the only one she has ever known; that she has resided her entire life in the United States, has never lived in Mexico and does not currently speak Spanish; her close community and family ties to the United States; education and employment ties to the United States and student loans; and stated safety concerns regarding Mexico which are corroborated by evidence in the record. Considered in the aggregate, the AAO finds the evidence sufficient 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.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if she were to relocate to Mexico to join him, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to a qualifying relative in this case. Accordingly, the applicant has not established that he is statutorily eligible for a waiver under sections 212(a)(9)(B)(v) or 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval 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.