

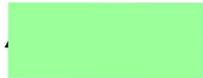
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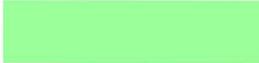
U.S. Citizenship
and Immigration
Services

Date: **APR 15 2013**

Office: SEATTLE

FILE: 

IN RE:

Applicant: 

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:

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 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 with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of The Gambia 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 is married to a U.S. citizen. On September 3, 2010, she filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her U.S. citizen husband and child.

In a decision dated November 16, 2011, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that her U.S. citizen husband and child would experience extreme hardship as a consequence of her inadmissibility. The field office director noted that the applicant did not show that the qualifying relatives' hardship was more severe than that suffered by the relatives of any individual who is refused admission into the United States. In addition, the field office director denied the waiver application in the exercise of discretion, finding that the applicant's "positive factors are significantly reduced by the crimes for which [the applicant] has been convicted.

On appeal, counsel for the applicant contends that the applicant's theft conviction does not involve moral turpitude. Counsel states that the statute of conviction is divisible and that the record evidence does not establish that the applicant's theft conviction "involved a permanent taking of the property." Counsel further states that even were the AAO to find the applicant inadmissible for having been convicted of a crime involving moral turpitude, the submitted evidence and documentation outlining psychological, financial, and emotional difficulties to the applicant's U.S. citizen husband and child demonstrate extreme hardship to her qualifying relatives.

The record includes, but is not limited to: counsel's brief; the applicant's declaration; a declaration by the applicant's husband; a counselor report; copies of birth, marriage, and naturalization certificates; a mortgage statement; copies of income tax returns and utility bills; medical insurance documentation; documentation concerning the couple's credit card debt; and documentation regarding the applicant's criminal history.

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 has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

- (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.

The Board of Immigration Appeals (Board) 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 on September 20, 2007, the applicant was convicted in [REDACTED] of theft in the third degree in violation of section 9A.56.050 of the Revised Code of Washington (RCW). The applicant was sentenced to 365 days imprisonment with 360 days suspended. The applicant was also fined \$5,000 with \$4,500 suspended and was placed on monitored unsupervised probation for a period of two years. The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

Section 9A.56.050 of the RCW provides that:

- (1) A person is guilty of theft in the third degree if he or she commits theft of property or services which (a) does not exceed seven hundred fifty dollars in value, or (b) includes ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.
- (2) Theft in the third degree is a gross misdemeanor.

Section 9A.56.020 of the RCW provides, in pertinent part, that:

- (1) "Theft" means:
 - (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
 - (b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
 - (c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. See *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974) ("It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . ."); see also *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966) ("Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude].") However, the Board has indicated that a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973).

In the present case, the Washington statute under which the applicant was convicted does not involve only permanent takings. In the case [REDACTED]

Court of Appeals noted that the definition of theft found in section 9A.50.020 of the RCW set out four distinct types of theft: theft by taking, embezzlement, theft by deception, and appropriation of lost or misdelivered property. 37 Wash.App. at 782. The Court of Appeals opined that for each of the four types of theft, RCW 9A.56.020(1) requires only the “intent to deprive” the victim of property or services. However, “intent to permanently deprive” has been judicially required in the State of Washington solely in cases of theft by taking. *Id.* Accordingly, the Court of Appeals has held that intent to permanently deprive is not required for theft by embezzlement, *see* [REDACTED] nor for the appropriation of lost or misdelivered property, *see* [REDACTED] citing *State* [REDACTED]. Therefore, the AAO cannot find that a violation of RCW § 9A.56.050 is categorically a crime involving moral turpitude.

Since the full range of conduct proscribed by the statute at hand does not constitute a crime involving moral turpitude, the AAO applies the modified categorical approach and engages in a second-stage inquiry by reviewing the record of conviction to determine if the conviction was based on conduct involving moral turpitude. *Silva-Trevino* 24 I&N Dec. 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. Here, the applicant submitted two documents comprising the record of conviction. She submitted a “Statement of Defendant on Submittal or Stipulation of Facts” and the [REDACTED] Docket Sheet, which reflects that on September 20, 2007, the applicant stipulated to facts sufficient to enter a finding of guilt for theft in the third degree. Importantly, the Stipulation of Facts Document, which was signed by the applicant on September 20, 2007, provides that:

“[The applicant] is the defendant in this case. [The applicant] wish[es] to submit the case on the record. [The applicant] understands that this means that the judge will read the *police report* and other materials and, based upon that evidence, the judge will decide if [she] is guilty of the crime of theft [in the third degree]. No one has made any threats or promises to get [her] to submit this case other than the prosecuting authority’s promise to [] make [certain] recommendations.” (Emphasis added).

That is, in a section of the applicant’s statement on stipulation to facts, the applicant agreed that the court may review the police report and other materials supplied by the prosecution to establish a factual basis to enter a finding of guilty. Police reports may be considered under the modified categorical approach “if specifically incorporated into the guilty plea or admitted by a defendant.” *Parrilla v. Gonzales*, 414 F.3d 1038, 1044 (9th Cir.2005).

The AAO notes that in *Suazo-Perez v. Mukasey*, 512 F.3d 1222 (9th Cir. 2007), the Ninth Circuit Court of Appeals, interpreting a similar section of a guilty plea in Washington state, found that in circumstances in which the defendant allows the criminal court to review the police report in order to establish the elements of the crime of conviction, immigration adjudicators may examine the police report without undermining the modified categorical approach. *Id.* at 1226-27. In such circumstances, the police report is specifically incorporated into the list of documents under the modified categorical approach comprising the record of conviction. *See Shepard v. United States*,

544 U.S. 13, 26 (2005) (concluding that the contents of police reports may be considered for the purpose of applying the modified categorical approach if they have been “specifically incorporated into the guilty plea or admitted by a defendant”); *see also United States v. Almazan-Becerra*, 537 F.3d 1094, 1097-1100 (9th Cir. 2008); *Suazo Perez v. Mukasey*, 512 F.3d at 1226 (considering a police report under the modified categorical approach where the alien had agreed that the criminal court could review such reports supplied by the prosecution to establish a factual basis for his plea); *Matter of Milian-Dubon*, 25 I&N Dec. 197, 200 (BIA 2010) (“While a police report, standing alone, is not part of the record of conviction, *Matter of Teixeira*, 21 I&N Dec. 316, 319 (BIA 1996), the respondent’s decision to incorporate the police report into the guilty plea made the report an “explicit statement ‘in which the factual basis for the plea was confirmed by the [respondent].’”).

Counsel states that the police report should not be considered because it was never admitted into the record of the applicant’s criminal proceedings or incorporated into the criminal complaint. Although the AAO can review the police report as part of the third stage of the *Silva-Trevino* framework regardless, we note here that we are not persuaded by counsel’s arguments. In this case, the statement by defendant on stipulation of facts clearly references the police report as the evidence upon which the judge may find a sufficient factual basis for the crime of conviction. The stipulation form contains the applicant’s signature and indicates that the statements made therein by the applicant are voluntary. Like the Board in *Milian-Dubon*, the AAO finds that this document, together with the judgment sheet indicating that the applicant “stipulates to facts sufficient to enter a finding of guilty” serve as the findings of fact adopted by the defendant upon entering the stipulation, which are part of the judicial record of conviction on which the courts may rely. *See Matter of Milian-Dubon*, 21 I&N Dec. at 201.

It was not necessary for the applicant to acknowledge the truth of every statement in the police report or for the judge in the criminal case to have specifically reviewed or referenced the report during the plea proceedings. *See United States v. Almazan-Becerra*, 537 F.3d 1094, 1099-1100 (9th Cir. 2008) (permitting reliance on police reports where the defendant stipulated generally that the reports and other documents within the court file contained a factual basis for his guilty plea, without specifically identifying which police reports contained the factual basis). The only requirement is that the police report or reports relied on in the immigration proceedings be incorporated by reference as at least part of the factual basis for the conviction. *Matter of Milian-Dubon*, 21 I&N Dec. at 201.

In this case, the police report indicates that the Washington Statute under which the applicant was convicted labels the crime “shoplifting” and the narrative indicates that the applicant’s crime was retail theft in a Macy’s store in Alderwood Mall, Washington. It was, therefore, theft by taking. Furthermore, in *Matter of Jurado-Delgado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. The reasoning in *Jurado-Delgado* is applicable to the applicant’s case in regards to her Washington conviction for theft in the third degree. She was thus convicted of taking the property of another with intent to permanently deprive that person of the property, a crime involving moral turpitude, and is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Having determined that the modified categorical approach establishes that the applicant's theft conviction renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, the AAO need not consider counsel's contentions regarding the applicability of *Silva-Trevino*'s third step in cases arising in the Ninth Circuit. Nevertheless, we note the BIA's ruling that the Ninth Circuit has not explicitly rejected *Silva-Trevino*, which we are bound to follow. *Matter of Guevara-Alfaro*, 25 I&N Dec. 417, 423 (BIA 2011).

The AAO notes that the applicant was convicted on September 9, 2008 in the Superior Court of [redacted] of third degree negligent criminal mistreatment in violation of RCW 9A.42.035. That statute provides, in pertinent part, that: "[a] person is guilty of the crime of criminal mistreatment in the third degree if the person ..., is a person employed to provide to the ... dependent person the basic necessities of life, and [w]ith criminal negligence, creates an imminent and substantial risk of substantial bodily harm [or with criminal negligence causes substantial bodily harm] to a ... dependent person by withholding any of the basic necessities of life." It is well-established that an offense that requires only criminal negligence does not constitute a crime involving moral turpitude. See *Matter of Perez-Contreras*, 20 I&N Dec. 615, 619 (BIA 1992) (moral turpitude not inherent in the Washington third-degree assault statute, because neither intent nor recklessness was required for a conviction for causing bodily harm with criminal negligence); see also *Matter of Solon*, 24 I&N Dec. 239, 242 (BIA 2007). However, the applicant remains inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of theft in the third degree, which is a crime involving moral turpitude.

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 AAO begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). In this case, the applicant asserts that denial of her admission will impose extreme hardship upon her U.S. citizen husband and child.

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 the 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 is 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.

With regards to extreme hardship upon separation from the applicant, the applicant's husband asserts that he would experience emotional, psychological, and financial hardship in the United States if the applicant is removed to the Gambia. In a declaration submitted on appeal and dated December 13, 2011, the applicant's husband indicates that in the event of the applicant's removal, he "will likely remain in the United States where [he has] a good job and own[s] a home." He asserts that he is experiencing emotional hardship in the form of stress and worry at the thought of losing his wife and their son. The applicant's husband indicates that he became upset and worried when he learned of the applicant's inadmissibility, and that his stress and anger has caused them marital problems. The applicant's husband further indicates that he blames the applicant for this situation and that he cannot imagine living without his wife and son.

In support, counsel for the applicant submitted on appeal an evaluation of the applicant's husband psychological state. The evaluation, prepared on December 13, 2011 by Licensed Mental Health Associate [REDACTED] states that the applicant's spouse was referred for a psychological evaluation by his wife's attorney [REDACTED] indicates that the applicant's immigration problems are affecting the applicant's husband psychologically because he "is often thinking about [the problems]." [REDACTED] concludes that she has diagnosed the applicant's husband with Adjustment Disorder with Mixed Anxiety and Depressed Mood. She states that "[h]is symptoms began after learning that his wife's petition was denied." The applicant's husband reported that he is experiencing stress, headaches, insomnia, and tiredness.

Though the AAO acknowledges the conclusions of [REDACTED] regarding the applicant's husband's mental state, the evaluation reflects that the applicant's husband is alert, high-functioning, and attentive. [REDACTED] further indicates that though the applicant's husband showed no signs of distractibility and that his attitude was open and cooperative. Memory functions were intact, and [REDACTED] did not notice any evidence of thought disorders, delusions or perceptual disorder. [REDACTED] indicates that the applicant's husband has expressed frustration and anger at his wife's immigration situation. The AAO recognizes the significance of anxiety resulting from the prospect of family separation as a hardship factor, but concludes that the asserted psychological difficulties, as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568.

The documentation in the record reflects that the applicant has a good relationship with her husband and their son, and that the applicant's husband desire is to maintain the family unit together in the United States. Here, the AAO recognizes the significance of family separation as a hardship factor, but concludes that the difficulties described by the applicant's husband, and as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In *Hassan v. INS*, *supra*, it was held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most aliens who are removed.

The applicant's husband asserts on appeal that the applicant's denial of admission would result in financial hardships. The applicant's husband indicates in his statement on appeal that "[his] monthly gross income is \$6,000" and that he is the sole provider for the family. He further states that he has "many bills to pay each month." However, the applicant's 2010 income tax return reflects that the applicant earned \$114,733 that year, an amount well beyond the yearly calculation of his \$6,000 monthly salary. The 2010 income tax return further indicates that the applicant's husband was the main source of financial support through his work as a nurse and that the applicant was a housewife. Neither counsel, the applicant nor her husband have provided an explanation for this inconsistency. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the applicant's husband asserts in his declaration on appeal that he has "many bills to pay each month, [including] \$644 in day care." There is independent evidence in the record indicating that the applicant pays \$161 weekly to the [REDACTED]. Yet, the applicant's husband submitted a declaration in support of the Form I-601 waiver application in which he stated that the applicant has been a "stay at home mom since [their] child was born." He further indicates that he has been fortunate in that the applicant has been able to take care of their son in their home. The applicant's husband has not explained this discrepancy on appeal. From the evidence provided on appeal and the above-noted discrepancies, the AAO is unable to determine the level of financial hardship, if any, that the applicant's spouse will experience if the applicant is denied admission to the United States. From the evidence provided on appeal and the above-noted discrepancies, the AAO is unable to determine the level of financial hardship, if any, that the applicant's spouse will experience if the applicant is denied admission to the United States.

Regarding the applicant's son's hardship resulting from separation, the AAO notes that the record evidence is unclear as to whether the applicant's son will relocate to Gambia or will remain in the United States with his father. Counsel asserts on appeal that if the applicant returns to Gambia, "she will likely take [her son] with her." In a declaration submitted in support of the Form I-601 waiver application, the applicant's husband indicated that if his wife is removed to Gambia, he would have to "put [their] son into daycare" and "[he] will have financial difficulties if [he] has to pay for the cost of daycare for [their] son," which suggests that the applicant's son would remain in the United States if the applicant is denied admission. Further, in a declaration dated August 17, 2010, the applicant indicates that "[i]f I were sent back to Gambia, our son [REDACTED] will have to stay here in America with my husband." Yet, in a declaration dated August 13, 2011, the applicant's husband indicates that if the applicant is removed, "[their] son will most likely go to Gambia with [his] wife." However, the applicant's husband's psychological evaluation reflects that he reported to [REDACTED] that if the applicant returns to Gambia, "the decision of who takes their son [REDACTED] is going to be difficult. The child is attached to his mother, but Gambia is a third world country according to [the applicant's husband]." Given these discrepancies, the AAO is unable to evaluate the asserted hardships to the applicant's son. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the foregoing, the AAO finds that when considering the emotional and psychological hardships collectively, the applicant has not fully demonstrated that the hardship her husband and son will experience as a result of separation is more than the common result of removal or inadmissibility.

With regards to the applicant's husband's hardships upon relocation to The Gambia, the record reflects that he will remain in the United States and will not relocate. In his declaration submitted on appeal, the applicant's husband indicates that "[i]f the [applicant] is deported, [he] will likely stay in the United States where [he] [has] a good job and own[s] a home." Further, [REDACTED] indicates in her evaluation that the applicant's husband reported that "there is no scenario in which he would go back to Gambia." [REDACTED] indicates that the applicant stated during the evaluation "I'm a U.S. citizen too. I have my life here." As the applicant's husband has asserted that he will not relocate to the Gambia if the applicant is denied admission, and the submitted evidence in the record of proceedings does not otherwise demonstrate extreme hardship to him from relocation to the Gambia, the AAO cannot find that refusal of admission would result in extreme hardship to the applicant's qualifying relative husband.

With regards to hardship to the applicant's son upon relocation, the AAO notes that the record is unclear as to whether the applicant's son would relocate with the applicant to the Gambia. Notwithstanding, even were the AAO to consider hardship to the applicant's son upon relocation, the record evidence is insufficient to establish that he would experience extreme hardship in that country. The applicant's husband indicates on appeal that his son is Christian and he is worried about how his son will be treated in Gambia. He indicates that Christians in the Gambia experience discrimination and that they cannot go to schools with Muslims, and looked upon as "bad people." While the AAO acknowledges the applicant's husband's statements, it notes that there is no evidence in the record from trusted country conditions sources showing that Christians are being discriminated against in Gambia because of their religious beliefs. Further, the record does not contain country conditions documentation corroborating the applicant's husband's assertions regarding diminished educational opportunities for Christians, employment discrimination against Christians, or that the applicant's family will force his son to convert to Islam. Accordingly, the record evidence is insufficient to demonstrate that the applicant's son would experience extreme hardship because of his religious beliefs.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relatives caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests 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.