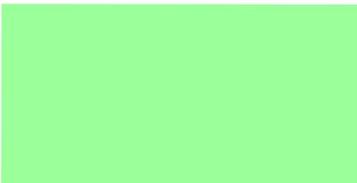




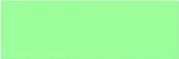
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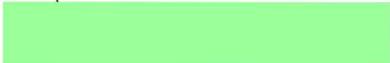
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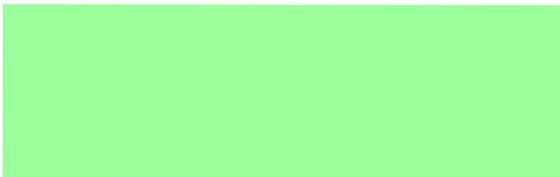
OFFICE: CHICAGO, IL

FILE: 

IN RE: 

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 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, Chicago, Illinois 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 committed a crime involving moral turpitude. The applicant is the daughter of a Lawful Permanent Resident and the mother of two U.S. citizens. She 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.

The Field Office Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship for a qualifying relative or that a favorable exercise of discretion was warranted in her case. He denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated February 22, 2011.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to demonstrate extreme hardship. He also contends that the totality of circumstances in the applicant's case call for a favorable exercise of discretion. *Form I-290B, Notice of Appeal or Motion*, dated March 23, 2011; *Counsel's brief*, dated March 23, 2011.

The record of evidence includes, but is not limited to: counsel's briefs; statements from the applicant, her spouse, her daughter and her brother-in-law; medical documentation relating to the applicant's mother; a mortgage statement; documentation of the applicant's beauty salon business; a Social Security income statement for the applicant's mother; country conditions information on Mexico; and court records relating to the applicant's conviction. The entire record was reviewed and all relevant evidence considered in reaching a 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.

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.)

The record reflects that the applicant pled guilty to Grand Theft, Florida Statutes § 812.014(2)(c)(1), a third degree felony, on October 12, 2004, with adjudication of guilt withheld. She was sentenced to serve two days in jail, with credit for two days time served; fined \$1,000 and required to pay a series of fees.

At the time of the applicant's conviction, Florida Statutes § 812.014 provided, in pertinent part:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.
- (2) (a)(1). If the property stolen is valued at \$100,000 or more; or
 - (c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 776.083, or s. 775.084, if the property stolen is:
 1. Valued at \$300 or more, but less than \$5,000.

At the time of the applicant's conviction, Florida Statutes § 775.082 provided the following penalty for a third degree felony:

- (3) A person who has been convicted of any other designated felony may be punished as follows:
 - (d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

The applicant has not disputed her inadmissibility on appeal, and the record does not show that the Field Office Director erred in determining that her offense is a crime involving moral turpitude. Accordingly, the AAO will not disturb the Field Office Director's finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

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

A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relatives in this proceeding are the applicant's U.S. citizen children and mother.¹ Accordingly, hardship to the applicant or other family members will be considered only insofar as it results in hardship to one or more of these qualifying relatives. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the BIA 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 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

¹ On appeal, counsel asserts that the applicant has a fourth qualifying relative, her spouse, whose adjustment to Lawful Permanent Resident status is pending. While the AAO acknowledges the applicant's spouse has applied for adjustment, he does not currently hold Lawful Permanent Resident status. Therefore, until such time as his application is approved, any hardship he may experience as a result of the applicant's inadmissibility can be considered only to the extent that it affects his children or his mother-in-law.

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 for a qualifying relative.

On appeal, counsel first addresses the impact of the applicant’s removal on her now 22-year-old daughter who, in an August 27, 2009 statement, indicates that she committed the theft for which her mother has taken the blame. The applicant’s daughter’s statement, counsel asserts, indicates the guilt she would feel if her mother is removed from the United States. He contends that living with the knowledge that she is to blame for the break-up of her family would be a lot for her to bear and that such emotional hardship is beyond that which normally results from a typical removal. Counsel further states that the terrible burden of guilt that would be with the applicant’s daughter for the rest of her life could result in her need for psychotherapeutic treatment and counseling. He also maintains that the applicant’s removal would lead to financial hardship for her daughter as it would require the closure of the applicant’s beauty salon business, the primary source of income for the family. As a result, counsel states, the applicant’s daughter would likely have to drop out of school in order to support herself and would have to defer her plans to become a cosmetologist.

Counsel also contends that the applicant’s removal would result in extreme hardship for her mother as her mother is physically and financially dependent on her. He asserts that based on the submitted documentation of the applicant’s mother’s monthly social security income and medical costs, the record establishes that she requires “outside assistance” to meet her financial obligations. The applicant’s removal to Mexico, counsel states, would put an end to her financial support of her mother since, as just noted, she would no longer have the income from her beauty salon business. He

also asserts that losing the income from the applicant's business would prevent the applicant's spouse and daughter from being able to assist her mother in her absence.

In support of the preceding claims, the record contains an August 26, 2009 statement from the Social Security Administration. The statement indicates that as of December 2008, the applicant's mother's regular monthly social security payment was \$343.70, from which \$96.40 was deducted for medical insurance, leaving her with \$247. It also indicates that as of January 2009, she was receiving a monthly Supplemental Security Income payment of \$350. The record further includes a handwritten August 2009 statement from Dr. [REDACTED] in which he reports that he has been treating the applicant's mother since February 4, 2006 for osteoarthritis, arterial hypertension and hyperlipidemia. The applicant has also submitted a Patient Insurance/Tax form for the period January 1, 2009 to August 26, 2009 that provides a list of the medications being taken by her mother.

In considering the record, we have taken note of counsel's assertions regarding the guilt and resulting emotional hardship that the applicant's daughter would suffer if her actions were to result in the break-up of her family. These claims, however, are not supported by documentary evidence, e.g., psychological evaluations or other medical evidence, demonstrating how and to what degree the applicant's daughter's guilt would affect her emotional/mental health in the event that her mother is removed from the United States. Without such evidence, counsel's claims are not sufficient to meet the applicant's burden of proof in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, we also find the record to contain no evidence, e.g., statements from the attorneys who represented the applicant at the time of her conviction, that supports the claim that the offense of which she was convicted was committed by her daughter. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO is also unable to determine the extent of the financial hardship that would result from the applicant's departure from the United States. While the record establishes that the applicant has a license to operate a beauty salon, no documentation, e.g., tax returns, has been submitted to establish the level of income this business generates for the applicant's family. Neither is there any evidence that demonstrates the continued operation of the salon is dependent on the applicant's physical presence. We further note that the record indicates that the applicant's family receives income from the employment of the applicant's spouse, who states in an August 29, 2009 email that he is employed on a full-time basis as a machine operator at the rate of \$11.50 per hour, although again no documentation of the applicant's spouse's employment or income has been submitted. The record also fails to document the applicant's family's financial obligations beyond the 2009 mortgage statement submitted with the Form I-601. Accordingly, we do not find the applicant to have demonstrated the financial impact of her removal on her family, including whether her removal would require her daughter to forego the courses she needs to become a cosmetologist. We also find no documentation of economic conditions in Mexico that demonstrates the applicant would be unable to obtain employment that would allow her to provide her family with financial assistance from outside the United States.

This same lack of documentary evidence prevents the AAO from determining the financial impact of the applicant's removal on her mother. Further, although the record demonstrates the amount of the applicant's mother's Social Security income in 2008-2009, it fails to establish that her monthly Social Security payments are her only source of income or that she is receiving financial support from her daughter. We also find no evidence of the applicant's mother physical dependence on the applicant. While Dr. [REDACTED] reports that the applicant's mother has several health problems and the Patient Insurance form establishes that she is taking medication, no documentary evidence in the record indicates the severity of the applicant's mother's health problems, establishes her need for assistance as a result of her conditions or demonstrates that whatever assistance she requires is being provided by the applicant.

Therefore, based on the record before us, the AAO is unable to find that separation from the applicant would result in extreme hardship for either her daughter or her mother.

To establish extreme hardship upon relocation, counsel points to the widespread violence in Mexico and the resulting risks to the safety of the applicant's daughter and mother should they move permanently to Mexico. Counsel also asserts that moving to Mexico would have a negative impact on the applicant's daughter's career goals as it would require her to drop her cosmetology classes in the United States without the assurance that she would be able to enroll in an equivalent program in Mexico. Counsel also maintains that the applicant's daughter's employment prospects in Mexico would not compare to those that would be available to her in the United States. He further states that the applicant's daughter has lived her entire life in the United States and that, consequently, Mexico is a foreign country to her, with an unfamiliar culture and way of life.

In the September 4, 2009 response he provided to the Field Office Director's Notice of Intent to Deny the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, counsel makes this same claim on behalf of the applicant's now 24-year-old son who has also lived in the United States since birth. He further indicates that, like his sister, the applicant's son would have to forgo his educational plans in the United States if he moved to Mexico with his mother.

With regard to the hardships that would be suffered by the applicant's mother upon relocation, counsel contends that there are no guarantees that she would be able to obtain the care she requires under the Mexican medical system. He also maintains that, in Mexico, the applicant's mother would no longer be able to get the "public assistance" she now receives in the United States and that she no longer has family in Mexico. In his September 4, 2009 statement, counsel asserts that the applicant's mother is dependent on a number of medications, some of which might be unavailable or difficult to obtain on a regular basis in Mexico, at least on the reduced income that the applicant would be earning in Mexico.

In support of the hardship claims relating to relocation, the record contains an August 20, 2009 Travel Alert published by the U.S. Department of State, as well as a Country Specific Information for Mexico, issued by the State Department on June 30, 2009. The Travel Alert reports on the alarming rise in drug-related violence in Mexico, particularly along the U.S.-Mexico border; the Country Specific Information for Mexico provides a range of information for U.S. citizens contemplating travel to Mexico, including an overview on health care and medical facilities in Mexico. The latter report indicates that while adequate medical care can be found in Mexico's major cities, care in more

remote areas is limited. It also states that many Mexican health facilities require payment prior to providing care.

In the present case, the record does not indicate the location in Mexico to which the applicant would return if she is removed from the United States. We note, however, that since issuing the 2009 Travel Alert found in the record, the Department of State has published a series of Travel Warnings for Mexico, most recently on November 20, 2012, which continue to report high levels of drug-related violence across Mexico and to advise U.S. citizens against traveling to an expanding number of Mexican states. Therefore, current conditions in Mexico will be considered in reaching a determination as to whether relocation would result in extreme hardship for a qualifying relative.

The AAO also acknowledges that the applicant's daughter and son have lived their lives in the United States and that relocation to Mexico would present difficulties for them. We further note that the applicant's mother has resided in the United States for more than 20 years, having been granted Lawful Permanent Resident status in 1990, and that she no longer has family members in Mexico.

However, the record does not indicate that any of these qualifying relatives would face a language barrier in relocating to Mexico and no country conditions materials in the record establish that the applicant's son and daughter would be unable to pursue their educational or career plans in Mexico. Neither does the record contain documentation that establishes the applicant's mother would be unable to obtain adequate medical care in Mexico, that she would find it difficult to obtain her prescription medications or that she would not continue to receive her Social Security checks. Therefore, we find that even when the hardship factors are considered in the aggregate, the record contains insufficient evidence to demonstrate that relocation to Mexico would result in hardship for the applicant's children or mother beyond that which normally results from the separation of a family.

As the record does not demonstrate that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, she has failed to establish eligibility for a waiver under section 212(h) of the Act. 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 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.