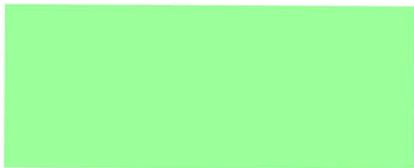


(b)(6)

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



U.S. Citizenship
and Immigration
Services



DATE: Office: ATHENS, GREECE

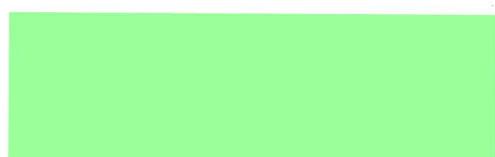
JUL 09 2013

FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

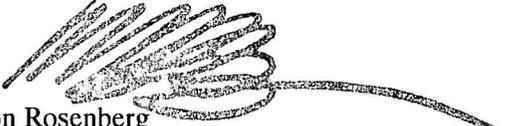


INSTRUCTIONS:

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 in accordance with the instructions on 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 Field Office Director, Athens, Greece. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application will remain denied.

The applicant is a native and citizen of Egypt 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 crimes involving moral turpitude and under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

In a decision dated October 14, 2011, the field office director concluded that the applicant had failed to show that his family would suffer hardship rising to the level of extreme as a result of his inadmissibility. The application was denied accordingly.

On appeal, counsel asserted that the field office director failed to consider the hardship factors to the applicant's spouse in the aggregate, the applicant warranted a favorable exercise of discretion, he was rehabilitated, and his admission would not be contrary to the national welfare, safety, and security of the United States.

On motion, counsel states that AAO failed to correctly consider the applicant's arguments on appeal and that he is submitting additional documentation on motion.

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.)

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. 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).

On appeal, the record indicated that on January 14, 1995, the applicant was convicted of conspiracy to commit bank fraud under 18 U.S.C. 371, was sentenced to four months home confinement, three years probation, and was made to pay a fine. We noted that the maximum penalty for a conviction under 18 U.S.C. § 371 was five years imprisonment. We then found that as the applicant had not contested his inadmissibility for this conviction on appeal, and the record did not reflect that that determination was in error, we would not disturb the finding that the applicant was inadmissible under section 212(a)(2)(A) of the Act for having committed a crime involving moral turpitude. The applicant does not contest this finding on motion.

We also noted the record showing that on January 25, 2008, the applicant was charged with forcible touching and sexual abuse in the third degree, but that this charge was dismissed on September 16, 2008 on motion of the District Attorney.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(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 . . .

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

On appeal, we found that the events which led to the criminal convictions for which the applicant was found inadmissible occurred more than 15 years ago and were waivable under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated.

We then found that although the applicant was eligible for a waiver under section 212(h)(1)(A) of the Act, no purpose would be served in waiving this ground of inadmissibility as the applicant remained inadmissible under section 212(a)(9)(B)(i)(II) of the Act and did not show that his inadmissibility was causing his qualifying relative extreme hardship.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

...

(iv) Tolling for good cause.-In the case of an alien who-

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

On appeal, the record showed that the applicant entered the United States as a B-1 visitor on September 11, 1992, with an authorized stay until October 10, 1992. On May 20, 1999, the applicant submitted an Alien Relative Petition (Form I-130) and adjustment application (Form I-485). This petition was dismissed after a divorce. The applicant then remarried, his new spouse filed another Form I-130, and the applicant filed a Form I-589 asylum application. On January 18, 2008 the applicant's asylum application was denied and he was ordered removed from the United States. On December 2, 2008, the applicant was removed from the United States. The applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until May 20, 1999, the date he filed his adjustment of status application. Therefore, we found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been

unlawfully present in the United States and seeking readmission within 10 years of his last departure. On motion, the applicant does not contest this finding of inadmissibility.

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998)(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 record of hardship on appeal included a statement from the applicant's spouse, medical documentation, and financial documentation. The record on motion includes: an affidavit from the applicant, an affidavit from the applicant's spouse, a statement from the applicant's spouse, a letter from the applicant's sister-in-law, the 2011 U.S. State Department Human Rights Report for Egypt, and additional financial and medical documentation. We note that the applicant's qualifying relative is his U.S. citizen spouse.

On appeal, the record indicated that the applicant's spouse was employed and living with her mother and sister. The applicant's spouse stated that she was depressed and very upset as a result of being separated from the applicant. The record indicated that the applicant's spouse had been diagnosed with insomnia and was taking prescription medication to help her sleep. Counsel stated that the applicant's spouse was suffering extreme emotional and financial hardship as a result of separation. He stated that if the applicant were in the United States he would be working with his brother-in-law as a limousine driver and his spouse would have a better standard of living. He stated that the applicant's spouse was helping the applicant financially, but provided no documentation to support this assertion. We also found that the record did not support counsel's assertions regarding the hardship suffered by the applicant's spouse. The financial documentation in the record suggested that the applicant's spouse was capable of supporting herself and did not indicate that she was suffering because of being separated from the applicant. We stated that no documentation was submitted to show what the applicant was or would be making if he returned to the United States and the medical documentation in the record did not show that the applicant's spouse's insomnia was caused by being separated from the applicant or that it was not controlled by prescription medication.

On motion, the record includes documentation regarding the applicant's spouse's insomnia and she states that she is suffering from depression, but cannot afford a psychological evaluation. We note that as stated on appeal, the record does not include documentation to support the assertions regarding the applicant's spouse's emotional hardship. The record does not contain any supporting documentation regarding the applicant's spouse's suffering from depression. We recognize the significant cost involved in obtaining a psychological evaluation and note that a psychological evaluation is not necessary to show extreme emotional hardship. The record does not include any supporting statements regarding the applicant's spouse's emotional state from family, friends, or co-workers. In addition, the record fails to detail how her emotional state is affecting her everyday functioning. In regards to financial hardship, the record is also unsupported. The applicant's

spouse indicates that she earns only enough to pay for her expenses and that there is no extra money for emergencies or other possible problems that may arise. We note that as the record establishes the applicant's spouse's annual income at approximately \$21,000, it does not fully support the budgetary information provided. We also note that the record indicates that the applicant's spouse has been able to afford visits to Egypt on four occasions since the applicant's departure. Finally, the applicant's spouse states that she is suffering medically because she is 51-years-old and wants to undergo fertility treatments to have a child with the applicant. The record includes a letter from a doctor in the United States, stating that the applicant and his spouse started fertility treatments in 2006 and 2007 and a letter from a doctor in Egypt stating that the applicant's spouse started treatments in Egypt in 2013. The letter from the Egyptian doctor states that the applicant's spouse needed to come in two more times to complete the procedures being done. We find that without more information regarding the course of treatment prescribed to the applicant's spouse, the access to this treatment in the United States and Egypt, and the requirements for the applicant's presence during treatment, we cannot ascertain whether being separated from the applicant would cause his spouse significant hardship in this regard. Thus, we again find that the record does not support a finding that the applicant's spouse will suffer extreme hardship as a result of separation.

In regards to relocation, on appeal counsel stated that the applicant was living in a small village with his father and siblings and that the applicant's spouse would suffer extreme hardship as a result of relocation due to the conditions in the country, but no documentation was submitted to support counsel's assertions regarding conditions in Egypt. On motion, the applicant states that he lives in a small village by himself, that the country is unsafe, that they do not have access to the kind of medical care in Egypt that they would have access to in the United States, and they cannot afford medical care in Egypt. In support of these assertions, the record includes the 2011 U.S. State Department Human Rights Report for Egypt, which includes general information concerning human rights abuses in the country. We find that this report does not indicate what conditions a person of the applicant's spouse's background and experience would encounter upon relocation. We note that the applicant's spouse was born and raised in Morocco and has visited Egypt four times since the applicant's departure, most recently in March 2013, where she received medical treatment. The evidence in the current record does not support a finding that Egypt would be unsafe for the applicant's spouse to relocate or that, given her background and the applicant's background, she would suffer extreme hardship upon relocation.

The assertions of the applicant and his spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded [it] . . ."). Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the motion will be granted and the underlying application will remain denied.

ORDER: The motion is granted and the underlying application remains denied.