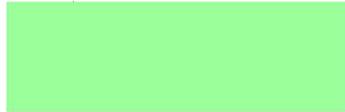




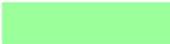
U.S. Citizenship  
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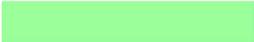
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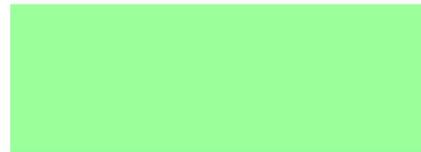
Office: DETROIT

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Detroit, Michigan, denied the waiver application. 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 prior decision of the AAO affirmed.

The applicant, a native of Lebanon and a citizen of Canada, is 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 applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), to reside in the United States with his U.S. citizen spouse and children. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse.

In a decision dated April 10, 2012, the Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and the waiver was denied accordingly. The applicant appealed that decision and the AAO rejected the appeal as untimely. Subsequently, counsel submitted proof of timely delivery of the appeal and the AAO reopened the matter to consider the appeal. The AAO dismissed the appeal and the applicant has filed a motion to reopen and a motion to reconsider.

On motion counsel cites recent case law in support of the assertion that the applicant is not inadmissible. Counsel also provides new evidence to establish extreme hardship to the applicant's U.S. citizen spouse.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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

(A)(i) Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or...

is inadmissible.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(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 applicant was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act.<sup>1</sup> The record establishes that on September 27, 2010, before the U.S. District Court, District of Arizona, the applicant pled guilty to Misprision of a Felony, 18 U.S.C. § 4. On February 28, 2011, the applicant was placed on probation for a period of five years. He was also ordered to pay restitution to American Express in the amount of \$200,000, to be paid jointly and severally with his co-defendants, in addition to \$200,100.00 in monetary penalties. On motion, counsel states that the June 20, 2013 U.S. Supreme Court decision in *Descamps v. United States*, 133 S.Ct. 2276 (2013), warrants a revisiting of the issue of whether the applicant was convicted of a crime involving moral turpitude. In particular, counsel states that the court found that “the court may not apply the modified categorical approach to sentencing under the ACCA when the crime of conviction consists of a single, indivisible set of elements.” However, in our prior decision, the AAO found that the applicant’s conviction is categorically a crime involving moral turpitude, and so any changes to the modified categorical inquiry (and we note that *Descamps* does not address crimes involving moral turpitude) will not alter the outcome.

The applicant is eligible to apply for a waiver of inadmissibility under section 212(h)(1)(B) of the Act, 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, son, or daughter of the applicant. The AAO previously found that the record did not demonstrate extreme hardship to the applicant’s spouse and children.

We will first consider whether the evidence submitted on motion changes our determination in regards to the hardship claimed to the applicant’s U.S. citizen spouse if she were to remain in the United States and be separated from the applicant. The record indicates that the applicant’s spouse is 35 years old, and was born in the United States in [REDACTED] Michigan, where she

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<sup>1</sup> The AAO notes that the applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of 1996 conviction for theft in Canada. On appeal, counsel states that there is no record of the applicant’s conviction before USCIS and the applicant did not make a formal admission to the crime. As the applicant is separately inadmissible under section 212(a)(2)(A)(i)(I) of the Act as the result of his 2011 conviction for misprision of a felony, the AAO does not need to make a final determination on this matter at this time. The AAO notes, however, that it is the applicant’s burden of proof in these proceedings and the applicant has failed to produce the court records for this stated offense in Canada or, in the alternative, proof that these court records are unavailable. See section 291 of the Act, 8 U.S.C. § 1361.

currently resides with the applicant and her children. The record indicates that the applicant and his spouse have two young children, ages 3 and 2. Counsel stated on appeal that the couple was expecting a third child, but no additional information was provided to support that assertion. On motion, the applicant submitted documentation of the birth of his third child on June 6, 2012. That child is now one year old. The applicant's spouse states that the applicant assists her in raising the children "from diapers to discipline." She also states that the applicant assists in supporting her immediate family, especially her parents, "with work around the house." Although the applicant's spouse states in her letter that she "cannot imagine being separated" from the applicant, the record still does not make clear what hardships she would suffer as a result of separation that would amount to extreme hardship, when considered in the aggregate. Counsel indicates that the applicant's spouse's immediate family is "most[ly] concentrated in the [REDACTED] Michigan area." A list previously provided by counsel indicated that the applicant's spouse had seven immediate family members in [REDACTED] Michigan including her parents, brothers and sisters. On motion, counsel submitted a new list of relatives for the applicant's spouse, which still indicates that the applicant's spouse's mother, father, brother (and sister-in-law), sister (and brother-in-law) and an additional brother live in [REDACTED] Michigan, where she and the applicant reside with their children. The applicant's spouse has multiple family members in the immediate area and has not indicated why she couldn't rely, if needed, on her family members. On motion, counsel also submitted a school record from her eldest child's Montessori School dated November 14, 2012. The record, which is partially illegible, indicates that the child is developing appropriately. The additional evidence submitted on motion does not change our prior analysis concerning the hardship to the applicant's spouse in regards to the care and raising of her children if she were to be separated from the applicant.

In regards to financial hardship, in our prior decision, we found that the documentation regarding the applicant and his spouse's contributions to the family income was outdated, dating back to 2008 and 2009. On motion, counsel also submitted a copy of 2011 Federal Income Tax Returns, which indicate a reported adjusted gross income of \$51,181 for the applicant and his spouse. The applicant did not submit his 2012 Federal Income Tax Returns, but rather a copy of the extension request for that year's income. In lieu of those tax returns, the applicant and his spouse did not submit paystubs or other documentation of their current incomes or documentation of their current financial situation and respective contributions. On motion, counsel submitted a printout from the Michigan Department of Licensing and Regulatory Affairs indicating the registered business of [REDACTED] registered to [REDACTED]. This documentation does not indicate the applicant's financial contribution to his household. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information 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 documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N

Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO recognizes the applicant's spouse's difficult position; however the hardships presented, even when considered in the aggregate, still do not rise to the level of extreme hardship.

On motion, counsel did not submit any new documentation regarding hardship to the applicant's children as a result of separation from the applicant. We will not disturb our prior decision that although the applicant's children are likely to endure hardship as a result of separation from the applicant, the record does not establish that the hardships either of them would face, each considered in the aggregate, rise to the level of "extreme."

In regards to the hardship to the applicant's spouse were she to relocate to Canada to reside with the applicant, we previously determined that the record did not establish that the applicant's spouse would suffer extreme hardship were she to relocate. The primary hardship stated as a result of relocation was in regards to the loss of the applicant's spouse's tenure in her profession and the argument that she would have to obtain new credentials in Canada. On motion, counsel submitted a printout from [REDACTED]. The printout indicates that looking for a teaching job in Canada from abroad can be a difficult task; however, the article goes on to state that applying from within the country is an easier task although it will take time. Counsel also provided documentation from [REDACTED] Canada detailing how individuals certified in another country may obtain certification to teach in [REDACTED]. There is nothing in this documentation to indicate that it would be impossible for the applicant's spouse to obtain teaching certification in Canada or obtain a job there. Additionally, counsel did not submit any documentation on motion that the applicant's spouse is currently working in her field. As noted previously, the only job letter on record is dated February 9, 2009. Again, the burden of proof is on the applicant in these proceedings. See Section 291 of the Act, 8 U.S.C. § 1361. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, as stated previously the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. at 885; *Matter of Ngai*, 19 I&N Dec. at 246-47; *Matter of Kim*, 15 I&N Dec. at 89-90; *Matter of Shaughnessy*, 12 I&N Dec. at 813. We also found previously that although the applicant's spouse has demonstrated significant family ties in the United States, those ties are primarily in [REDACTED] Michigan which is very near the border with Canada. The record still fails to indicate why the applicant's spouse would be unable to maintain ties with her family in Dearborn were she to relocate to Canada. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Canada, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the applicant's children and the hardship that they would experience as a result of relocation to Canada, the applicant's spouse states that it would be a hardship to remove her eldest

child from his pre-school. On motion, counsel submitted updated documentation from the son's pre-school. It is still unclear why the child would suffer hardship if he were to be enrolled in a new pre-school in Canada. Additionally, the record still fails to indicate why the applicant's children would be unable to maintain relationships with their grandmother and other family ties in the United States were they to relocate to Canada. The AAO notes that the children would suffer some hardship upon relocation, but the record does not indicate that those hardships, considered in the aggregate for each child, are beyond the hardships normally experienced by individuals as a result of immigration inadmissibility.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the motion is granted, but the prior decision of the AAO is affirmed.

**ORDER:** The prior decision of the AAO is affirmed.