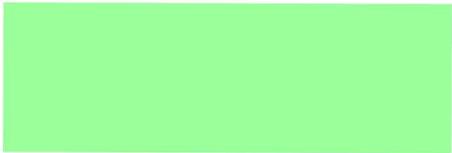




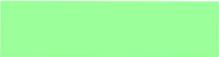
U.S. Citizenship
and Immigration
Services

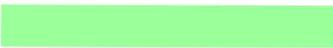
(b)(6)



Date: **SEP 26 2013**

Office: SAN SALVADOR

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:

SELF-REPRESENTED

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,

Ron Rosenberg
Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The Field Office Director, San Salvador, El Salvador, denied the waiver application and the matter 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 inadmissible under 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 crimes involving moral turpitude. The record reflects that the applicant was convicted for Fraudulent Destruction / Removal or Concealment of Writing in 2007 and of Theft in 2010. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. lawful permanent resident spouse and her U.S. citizen children.

The Field Office Director found that the applicant failed to establish that a qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated March 11, 2013.

On appeal the applicant contends in the Notice of Appeal (Form I-290B) that she wants to spend her last years near her family in the United States. The record contains a statement from the applicant's spouse and son; financial documentation; medical documentation for the applicant; and country information about Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states, 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 (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 in July 2007 the applicant was convicted in Texas for Fraudulent Removal of Writing under Texas Penal Code section 32.47, which stated:

(a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

- (1) printing or any other method of recording information;
- (2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;
- (3) symbols of value, right, privilege, or identification; and
- (4) labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d), an offense under this section is a Class A misdemeanor.

The complaint, dated July 6, 2007, states that the applicant, with the intent to defraud and harm another, removed a writing, to wit a price tag. The AAO notes that any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert denied, 383 U.S. 915 (1966). Thus, the applicant's conviction for Fraudulent Removal of Writing is a crime involving moral turpitude.

In December 2010 the applicant was convicted in Texas under section 31.03 of the Texas Penal Code, which stated:

(a) A person commits [a Theft] offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

- (1) it is without the owner's effective consent;
- (2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or
- (3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude

(b)(6)

only when a permanent taking is intended.”). *See also, In re Jurado-Delgado*, 24 I&N Dec. 29, 33 (BIA 2006) (In determining whether theft is a crime of moral turpitude, the BIA considers “whether there was an intention to permanently deprive the owner of his property.”)

In the present case, each of the statutory requirements for the offense of Theft in Texas contains the element of unlawful appropriation of property with intent to deprive the owner of property, and the Texas courts have found that this requires a permanent deprivation. *See, e.g., Ellis v. State*, 714 S.W.2d 465, 475 (Tex. App. 1st 1986). The offense is thus categorically a crime involving moral turpitude.

As the applicant has not disputed on appeal that these convictions are for crimes involving moral turpitude, and the record does not show the finding of inadmissibility to be erroneous, we will therefore not disturb the finding of the Field Office Director.

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

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...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 established to the satisfaction of the [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...

(2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as [she] may by regulations prescribe, has consented to the alien’s applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The applicant is seeking 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. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s U.S. lawful permanent resident spouse and U.S. citizen sons.

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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (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.

On appeal the applicant states that her daughter died of cancer and that she has survived cancer, and wishes to live close to her family in the United States. The applicant's spouse states that he is sad being separated from the applicant and needs her for strength. He states that their children also need her as one son separated from his wife and needs his mother's support, and they all need the applicant to prepare meals, keep the house orderly, keep the family united, and guide the children and grandchildren. The applicant's spouse states that he plans to buy cattle and a ranch near his sons, but fears for the applicant's safety in Mexico. He states that he becomes tired of the drive to visit the applicant because he is elderly, that it is an expense and physical stress unnecessary if the applicant were here. The spouse also states that it is difficult to travel to Mexico to take the applicant to medical appointments, so she sometimes goes alone where highways are not safe due to violence.

One son states that the applicant had a difficult time after her daughter's death and has had chemotherapy herself. He states that he is sometimes unable to visit the applicant in Mexico because of his job and the time to travel there, and he cannot move to Mexico since he helps his parents financially and there is high unemployment where the applicant lives. The son states that the plans of his father to buy a ranch are on hold due to the applicant's health and that he worries about the applicant's wellbeing due to her poor health in an unsafe country. He also states that it is difficult to care for her while she is in Mexico.

The AAO finds that the record fails to establish that the qualifying relative spouse and sons suffer extreme hardship as a consequence of being separated from the applicant. The applicant's spouse states he is sad being separated from the applicant, and that he and his sons need her. The record contains no supporting evidence concerning the emotional hardship the applicant's spouse states he and his sons experience due to long-term separation from the applicant or how such emotional hardships are outside the ordinary consequences of separation. Going on record without supporting documentary 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nor has it been established that the applicant's spouse and sons are unable to continue to travel to Mexico to visit the applicant.

The applicant's spouse notes the expense of travel to Mexico to visit the applicant and a son states he helps his parents financially, but no detailed explanation of the financial effects of separation from the applicant has been provided. Other than utility bills, no documentation has been submitted establishing the spouse's or sons' current incomes, expenses, assets, and liabilities or overall financial situation, or any contribution the applicant made, to establish that without the applicant's physical presence in the United States the spouse and sons experience financial hardship.

The applicant's spouse and sons state they are concerned about the applicant's health in Mexico. Other than two brief notes stating that the applicant has been treated for cancer, medical documents

on the record are in Spanish with no translation.¹ The notes state that the applicant was diagnosed with cancer in 2010, and the record contains no further information on her current condition and prognosis for recovery. The evidence on the record does not establish that her medical condition and situation in Mexico are serious enough to cause hardship to her spouse or sons that rises to the level of extreme.

The AAO recognizes that the applicant's spouse and sons endure hardship as a result of separation from the applicant. However, their situation if they remain in the United States is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse and sons face as a result of separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds the record fails to establish that the applicant's spouse and sons would experience extreme hardship if they were to relocate to Mexico. The spouse and sons state that Mexico is unsafe and has unemployment, but reports submitted to the record describe generalized country conditions and the record does not indicate how they specifically affect the applicant's spouse or sons. The submitted country conditions information fails to establish that the applicant's spouse and sons would be at risk as a result of relocating to Mexico.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse and sons will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a loved one is removed from the United States and/or refused admission. Although the AAO is not insensitive to the situation of the applicant's spouse and sons, the record does not establish that the hardship they face rises to the level of "extreme" as contemplated by statute and case law.

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.

ORDER: The appeal is dismissed.

¹ The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.