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

U.S. Citizenship and Immigration Services

(b)(6)

Date: DEC 12 2014 Office: PHOENIX 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 (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,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona, 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 to be inadmissible to the United States 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 a crime involving moral turpitude. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her lawful permanent resident spouse and her U.S. citizen children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated December 10, 2013.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) erred in finding that the applicant had not established that her qualifying relatives would suffer extreme hardship if the waiver application was not approved, and submits additional evidence of hardship to his qualifying relatives.

The record includes, but is not limited to, the following documentation: a brief by applicant's counsel in support of the Form I-290B, Notice of Appeal or Motion; a statement from the applicant; medical documentation for the applicant's spouse; financial documentation; letters of reference; country-conditions information about Mexico; and the applicant's criminal records. 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.)

In assessing whether a conviction is for a crime involving moral turpitude, the adjudicator must first "determine what law, or portion of law, was violated." *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). The adjudicator engages in a categorical inquiry, considering the "inherent nature of the crime as defined by statute and interpreted by the courts," not the underlying facts of the criminal offense. *Matter of Short,* 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States,* 495 U.S. 575, 599-600 (1990)). If the statute "defines a crime in which turpitude necessarily inheres, then the conviction is for a crime involving moral turpitude." *Matter of Short*, *supra*, at 137.

For cases arising in the Ninth Circuit, the determination of whether a crime is a crime involving moral turpitude first requires the categorical inquiry set forth in *Taylor v. United States*, 110 S.Ct. 2143 (1990). *See Nicanor-Romero v. Mukasey*, 523 F.3d 999, 1004 (9th Cir. 2008), *overruled on other grounds by Marmolejo-Campos v. Holder*, 58 F.3d 903, 911 (9th Cir. 2009). The purpose of the categorical approach is to determine whether the full range of conduct encompassed by the statute constitutes a crime of moral turpitude. *Cuevas–Gaspar v. Gonzalez*, 430 F.3d 1013, 1017 (9th Cir. 2005). If the statute "criminalizes both conduct that does involve moral turpitude and other conduct that does not, the modified categorical approach is applied." *Marmolejo-Campos*, 558 F.3d at 912 (citing *Fernando-Ruiz v. Gonzalez*, 466 F.3d 1121, 1163 (9th Cir. 2006)); *see also Castillo-Cruz v. Holder*, 581 F.3d 1154, 1161 (9th Cir. 2009). However, there must be "a realistic probability, not a theoretical possibility, that the statute would be applied to reach conduct that did not involve moral turpitude." *Nicanor-Romero*, 523 F.3d at 1004 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). To demonstrate a "realistic probability," the applicant must point to his or her own case or other cases in which the state courts in fact did apply the statute to conduct not involving moral turpitude. 523 F.3d at 1004-05. A realistic probably also exists where the statute expressly punishes conduct not involving moral turpitude. *See U.S. v. Vidal*, 504 F.3d 1072, 1082 (9th Cir. 2007).

Once a realistic probability is established, the modified categorical approach is applied, which requires looking to the "limited, specified set of documents" that comprise what is known as the record of conviction – the charging document, a signed plea agreement, jury instructions, guilty pleas, transcripts of a plea proceeding and the judgment – to determine if the conviction entailed admission to, or proof of, the elements of a crime involving moral turpitude. *Castillo-Cruz*, 581 F.3d at 1161 (citing *Fernando-Ruiz,* 466 F.3d at 1132-33); *see also Marmolejo-Campos*, 558 F.3d at 912 (citing *Cuevas–Gaspar*, 430 F.3d at 1020). The Ninth Circuit has reaffirmed that courts may not examine evidence outside the record of conviction in determining whether a conviction was for a crime involving moral turpitude. *See Olivas-Motta v. Holder*, 716 F.3d 1199, 1203 (9th Cir. 2013) (rejecting *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)). Where the burden of proof is on the applicant, as in the present case, the applicant cannot sustain that burden where the record of conviction is inconclusive. *Young v. Holder*, 697 F.3d 976, 989 (9th Cir. 2012).

The record establishes that the applicant pled guilty and was convicted for attempted hindering a prosecution, class 6 undesignated felony offense, on October in the , Arizona Revised Statues (A.R.S) §§ 13-1001 (attempt), 13-2512 (hindering prosecution in the first degree).

A.R.S. § 13-1001 states, in pertinent part:

Attempt; Classifications

> A. A person commits attempt if, acting with the kind of culpability otherwise required for commission of an offense, such person:
>
> > 1. Intentionally engages in conduct which would constitute an offense if the attendant circumstances were as such person believes them to be; or
> > 2. Intentionally does or omits to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense. . . .

A.R.S. § 13-2512 states, in pertinent part:

Hindering prosecution in the first degree; classification

> A. A person commits hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another for any felony, the person renders assistance to the other person.

The record indicates that the applicant was convicted of attempting to hinder the prosecution of her son for aggravated assault. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the field office director. The applicant therefore requires a waiver of inadmissibility pursuant to section 212(h) of the Act.

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

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his 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.

Section 212(h) of the Act provides that a waiver of inadmissibility 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. The applicant's lawful permanent resident spouse and U.S. citizen children are qualifying relatives in this case. Hardship the alien experiences upon removal is irrelevant to section 212(h) waiver proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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.

Counsel contends that the applicant's spouse will suffer medical hardship if the applicant's waiver application is not approved. The applicant submits an affidavit stating that her spouse suffers from anxiety and high blood pressure. She states that her spouse suffered chest pains attributed to a severe anxiety attack in 1997, and again in 1999. She states that in 2002, when their son died in an accident, he began to suffer anxiety attacks almost every day and that his anxiety paralyzes him to the point that he cannot drive. The record includes prescription information for the applicant's spouse dated January 24, 2014, which indicates that the applicant's spouse has been prescribed with the anti-depressant drug Paxil. However, there is no evidence regarding the anxiety attacks that applicant's spouse experienced in 1997, 1999, and 2002. Although the applicant'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."). The record contains no further details about this condition and any treatment other than the prescribed anti-depressant drug that may be required. While we acknowledge the claim that the applicant's spouse will experience emotional hardship were he to remain in the United States while his wife relocates abroad, the record does not establish the severity of this hardship or the effects on his daily life.

Counsel also contends that the applicant's spouse will suffer medical hardship if the applicant's waiver is not approved. The record includes evidence that the applicant's spouse suffers from high blood pressure and hyperglycemia, but does not provide a detailed explanation from his treating physician of the nature and severity of the condition, prognosis, or any necessary treatment. Without more detailed information, we are not in the position to reach conclusions concerning the severity of his condition or any treatment or family assistance needed.

The documentation on the record indicates that the applicant's spouse will suffer from some emotional and medical hardship if he is separated from the applicant, however it does not establish the severity of the hardship of the effects on his daily life. Further, the medical and psychological hardship to the applicant's spouse is mitigated by evidence in the record that the applicant's spouse has three children in the United States, and no evidence was submitted to establish that the children are unable to provide care and support to the applicant's spouse in the absence of the applicant. The record lacks sufficient evidence demonstrating that the hardships to the applicant's spouse or other

impacts of separation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, such that the applicant's spouse would experience extreme hardship if he is separated from the applicant.

Counsel asserts that relocation to Mexico is not possible. The record reflects that the applicant's spouse was born in Mexico and thus is familiar with the language and customs of that country. In addition, the applicant has not addressed whether she has family ties in Mexico, and thus we are unable to ascertain whether and to what extent the applicant would receive assistance from family members for both herself and her spouse. In addition, the applicant failed to provide any detail regarding the applicant's spouse's relationships with family members in the United States and whether he has family ties in Mexico to provide assistance upon relocation.

Counsel asserts that the applicant's spouse would not be able to continue his treatment for anxiety and high blood pressure in Mexico; however, there is no evidence in the record to support this assertion. 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)).

Counsel also contends that the applicant's spouse would have to live in a country riddled with narco-terrorism and violence if he were to return to Mexico and submits country-conditions information on Mexico. Counsel submits a copy of the U.S. Department of State Travel Warning for Mexico, dated January 9, 2014 (which was updated on October 10, 2014), which states that crime and violence are serious problems and can occur anywhere. With respect to the Sonora, where the applicant and his spouse were born, the Travel Warning states:

> Sonora is a key region in the international drug and human trafficking trades and can be extremely dangerous for travelers. Travelers throughout Sonora are encouraged to limit travel to main roads during daylight hours. The region west of Nogales, east of Sonoyta, and from Caborca north, including the towns of Saric, Tubutama, and Altar, and the eastern edge of Sonora bordering Chihuahua, are known centers of illegal activity, and non-essential travel between these cities should be avoided. Travelers should also defer non-essential travel to the eastern edge of the state of Sonora, which borders the state of Chihuahua (all points along that border east of the northern city of Agua Prieta and the southern town of Alamos), and defer non-essential travel within the city of Ciudad Obregon and south of the city of Navojoa. You should exercise caution while transiting Vicam in southern Sonora due to roadblocks that can be instituted ad hoc by local indigenous and environmental groups. U.S. citizens visiting Puerto Peñasco should use the Lukeville, Arizona/Sonoyta, Sonora border crossing, and limit driving to daylight hours.

See Travel Warning-Mexico, U.S. Department of State, dated October 10, 2014.

Although the record indicates that the applicant's spouse would face danger in certain locations in Mexico, we find the evidence insufficient to demonstrate that the applicant's qualifying relative spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant. Based on the evidence on the record, considered in the aggregate, the applicant has not established that her

spouse would suffer hardship beyond the common results of removal if he were to relocate to Mexico to reside with the applicant.

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 will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate but expected difficulties arising whenever a loved one is removed from the United States. Although we are not insensitive to the situation of the applicant's spouse, the record does not establish that the hardship he faces rises to the level of extreme, as contemplated by statute and case law. Moreover, as the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

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.