



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE **JAN 03 2014** OFFICE: ATLANTA, GA [REDACTED]

IN RE: [REDACTED]

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:
[REDACTED]

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

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana 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 been convicted of one or more crimes involving moral turpitude. The applicant is the parent of a U.S. citizen. The applicant seeks a waiver of inadmissibility under section 212(h), 8 U.S.C. § 1182(h), in order to remain in the United States.

The Field Office Director concluded that the applicant had failed to establish extreme hardship to his U.S. citizen child and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated June 28, 2012.

On appeal, counsel submits a brief, letters in support, photographs, and a court order. In the brief, counsel contends the Field Office Director should have provided the applicant with an opportunity to supplement the record with additional hardship evidence. Counsel moreover asserts that the applicant has submitted sufficient evidence of extreme hardship to both his U.S. citizen children,

The record includes, but is not limited to, the documents listed above, other applications and petitions, letters from family and friends, evidence of birth, marriage, residence, and citizenship, financial documents from 2004-2008, and documentation of criminal proceedings. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO will first address the finding of inadmissibility. Section 212(a)(2) of the Act provides, in pertinent part, that:

- (A) (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.
- (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
 - (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

- (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)

....

- (B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more 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 on February 2, 2009 the applicant was convicted in the Superior Court of Georgia, of forgery in the first degree in violation of section 16-9-1 of the Code of Georgia. The applicant was sentenced to a term of 10 years confinement, which he was allowed to serve on probation.

At the time of the applicant's conviction, Ga. Code Ann. § 16-9-1 provided:

- (a) A person commits the offense of forgery in the first degree when with intent to defraud he knowingly makes, alters, or possesses any writing in a fictitious name or in such manner that the writing as made or altered purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority and utters or delivers such writing.

(b) A person convicted of the offense of forgery in the first degree shall be punished by imprisonment for not less than one nor more than ten years.

Section 16-9-1 of the Code of Georgia is violated when the offender has the “intent to defraud” by uttering or delivering a fictitious writing. Fraud has, as a general rule, been held to involve moral turpitude. In *Matter of Seda*, the BIA determined that a conviction for forgery in the first degree in violation of the Code of Georgia is a crime involving moral turpitude. 17 I. & N. Dec. 550, 552 (BIA 1980). The U.S. Supreme Court in *Jordan v. De George* concluded that “Whatever else the phrase ‘crime involving moral turpitude’ may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 U.S. 223, 232 (1951). Therefore, the applicant’s offense is categorically a crime involving moral turpitude, and he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this inadmissibility on appeal.

The AAO additionally finds that the applicant is inadmissible under section 212(a)(2)(B) of the Act. On February 2, 2009, the applicant was also convicted in the Superior Court of [REDACTED] Georgia, of one count of financial identity fraud in violation of section 16-9-121 of the Code of Georgia. The applicant was sentenced to a term of 10 years of confinement, concurrent with the term for the forgery charge, to be served on probation. As the applicant has two or more convictions, in which he was sentenced to an aggregate of over 5 years of confinement, the AAO finds he is also inadmissible under section 212(a)(2)(B) of the Act.

The record reflects that the applicant also has a 2004 driving under the influence conviction, as well as a 2005 deferred sentence conviction for theft by shoplifting. As the AAO has determined the applicant is inadmissible under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Act, these other convictions will not be addressed here for purposes of inadmissibility.

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

(h) The Attorney General [now Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -

...

(1) (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 [now the Secretary of Homeland Security (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) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative. Under section 212(h), qualifying relatives include U.S. citizen or lawful permanent resident spouses, parents, sons and daughters. Hardship to the applicant is considered only to the extent it results in hardship to the qualifying relative. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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 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.

Counsel contends the Field Office Director should have issued a Request for Evidence if the I-601 application lacked evidence, and that the decision disregarded the evidence submitted with the waiver application. The AAO notes that the applicant has now submitted additional evidence, and that the entire record will be considered in making a decision on appeal.

Counsel contends the applicant's daughter [REDACTED] would experience extreme hardship upon separation from the applicant. The applicant states that [REDACTED] mother passed away a few days after [REDACTED] was born in 2008. He explains that he takes care of [REDACTED] when she is not attending school. Counsel asserts that the applicant is [REDACTED] sole provider, and a source of support for her. Counsel claims that [REDACTED] grandmother has multiple health issues, and would be unable to adequately take care of her. Counsel concludes that the emotional trauma associated with losing a mother and a father would be overwhelming for [REDACTED]

Counsel states that the applicant would be unable to support [REDACTED] financially if he returned to Ghana, and that moving to Ghana would entail relocating to a village without basic amenities, like running water and electricity, as well as a complete change in culture. Counsel indicates that the applicant currently supports two daughters, his girlfriend and her three children, his mother, and a cousin with an income of \$15,000 a year. Counsel claims that the applicant would have to work on a farm if he returned to Ghana, and that he would be unable to provide a good quality of life and education for [REDACTED] with this income. Counsel moreover indicates that [REDACTED] maternal family is very involved in her life. Counsel explains that [REDACTED] grandmother, great-grandmother, aunt, great-aunts, great-uncles, and cousins are all in the United States. Counsel contends that these maternal family members would be heartbroken if [REDACTED] relocated to Ghana, given their family ties.

Counsel asserts that [REDACTED], born on October 13, 2010, is also a qualifying relative, even though she was not listed as such on the I-601 application. [REDACTED] explains in a letter that she did not tell the applicant she was pregnant with his child because, at the time, the applicant was mourning the loss of his wife. She states that the applicant is now in a relationship with her, and that the applicant helps take care of her, [REDACTED] and her three other children. [REDACTED] explains that the applicant has provided for [REDACTED] economically and socially. [REDACTED] three other children indicate in letters that the applicant has helped support them financially, and has also been a good step-father. Family photographs are submitted on appeal.

Counsel claims that, if the waiver application were denied, [REDACTED] would most likely relocate to Ghana with him. Counsel states that [REDACTED] has never been to Ghana, and has no understanding of life in Ghana. Counsel asserts that [REDACTED] would also suffer the same hardship [REDACTED] would experience in Ghana.

The applicant has demonstrated that his daughter [REDACTED] who is now five years old, would experience extreme hardship upon separation. The applicant has submitted a death certificate indicating that [REDACTED] mother, then the applicant's spouse, died a few days after [REDACTED] birth. As her mother has passed away, separation from the applicant would necessarily entail a childhood without either parent. Although the record does not contain any documentation supporting counsel's claim that [REDACTED] grandmother would be unable to raise [REDACTED] without the applicant present, the AAO finds that, in this case, separation from both parents at five years of age entails extreme hardship.

The applicant has not, however, submitted sufficient evidence to support counsel's claims that [REDACTED] would experience extreme hardship upon relocation to Ghana. Counsel makes assertions that [REDACTED] would experience hardship due to poor living conditions, the applicant's inability to provide for his daughter financially, and cultural and educational adjustment issues. The applicant fails to submit evidence, such as documentation on country conditions, to support these assertions. Although the 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). Without supporting evidence, the applicant has not met his burden of proof in demonstrating that [REDACTED] would experience extreme hardship upon relocation to Ghana.

The AAO notes that relocation to Ghana would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that [REDACTED] difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, or other impacts of relocation on the applicant's child [REDACTED] are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's child relocates to Ghana.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the child [REDACTED] in this case.

Furthermore, although counsel contends that [REDACTED] is also the applicant's child, and therefore, a qualifying relative for purposes of a waiver of inadmissibility, the applicant has not submitted sufficient evidence, including but not limited to government-issued documents, confirming that [REDACTED] is the applicant's child. As evidence of the relationship, counsel submits letters from [REDACTED] mother and her family in support, and a court order changing [REDACTED] name. However, the final order changing [REDACTED] does not explicitly state that the applicant is [REDACTED] nor does the record contain government documents as evidence of child's paternity. Without sufficient evidence, the AAO cannot conclude that [REDACTED] is the applicant's legal child, and, by extension, a qualifying relative for a waiver of inadmissibility.

Even if the applicant demonstrated that [REDACTED] is a qualifying relative, the record does not contain sufficient evidence to establish that she would experience extreme hardship without the applicant present. Although counsel and the applicant contend he provides for her financially, the applicant has not submitted evidence, such as documentation of his current income or his expenditures on [REDACTED] behalf, in support of this assertion. Furthermore, the applicant has not submitted documentation establishing that [REDACTED] mother would be unable to provide for [REDACTED] without the applicant's financial assistance.

The AAO acknowledges that separation from the applicant may cause [REDACTED] emotional difficulties. However, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, or other impacts of separation on the child [REDACTED] are cumulatively above and beyond the hardships

commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Ghana without her.

Moreover, as with [REDACTED] the applicant has not submitted evidence to support assertions that [REDACTED] will experience hardship in Ghana due to adverse living conditions, the applicant's ability to earn sufficient income, or cultural and adjustment issues. Nor does the applicant assert that relocation would entail separation from [REDACTED]. Given the assertions made and the lack of evidence in support, the AAO cannot conclude that [REDACTED] would experience extreme hardship upon relocation to Ghana.

In this case, the record does not contain sufficient evidence to show that the hardships faced by a 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 a qualifying relative as required under section 212(h) 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 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.