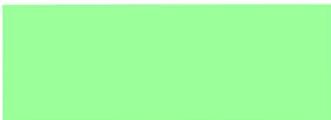
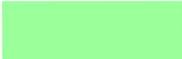


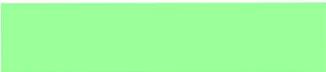


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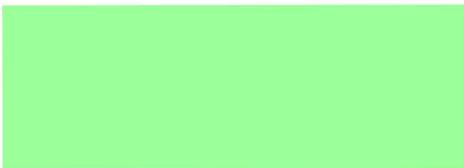


DATE: **JUL 18 2014** OFFICE: LAS VEGAS FIELD OFFICE FILE: 

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 Field Office Director, Las Vegas, Nevada denied the waiver application and a subsequent appeal 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 AAO decision will be affirmed.

The applicant is a native and citizen of Morocco 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 a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his U.S. citizen spouse and stepchild and his lawful permanent resident mother.

The field office director concluded that the applicant does not merit a grant of his waiver application as an exercise of discretion and denied the application accordingly. *See Decision of the Field Office Director*, dated June 14, 2013.

On appeal we determined that the record contains sufficient evidence to find that the applicant's spouse and spouse's daughter would suffer extreme hardship upon relocation to Morocco, although the applicant's mother would not experience extreme hardship upon relocation. In the same decision, we found that the record does not establish that a qualifying relative would suffer extreme hardship due to separation from the applicant. The appeal was subsequently dismissed. *Decision of the AAO*, dated January 25, 2014.

On motion counsel asserts that the applicant's conviction was the result of ineffective counsel for which he has filed a motion to have the conviction overturned or reduced.¹ Counsel also asserts that the AAO erred in not finding hardship to qualifying relatives due to separation. In support of the motion counsel submits a brief, an updated affidavit from the applicant, and a copy of a Motion for Post Conviction Relief filed in the Circuit Court of the Ninth Judicial Circuit of Florida. The record also contains letters from the applicant's spouse, a letter from the applicant, a letter from the applicant's mother, identity documents, background country conditions concerning Morocco, psychological evaluations of the applicant's spouse, and financial documentation. 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 parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

¹ In his brief counsel asks that we hold the applicant's case in abeyance pending a ruling by the Circuit Court of the Ninth Judicial Circuit of Florida on the Motion for Post Conviction Relief. However, without certified documentation from the court indicating that the applicant's conviction has been vacated for underlying procedural or constitutional defect having to do with the merits of the case, it remains a conviction for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

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

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

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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

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 the applicant pled guilty to robbery by sudden snatching pursuant to section 812.131(2)(B) of the Florida Statutes on December 11, 2006. Following a guilty plea, the applicant was sentenced to 18 months of probation with certain conditions and adjudication withheld. A subsequent violation of probation resulted in a revocation of probation on June 4, 2007 and sentence of 180 days in county jail.

The Board has determined that “robbery is universally recognized as a crime involving moral turpitude.” *Matter of Martin*, 18 I&N Dec. 226, 227 (BIA 1982). Further, the Board found that robbery involves moral turpitude and is an offense against both person and property that is “a grave, serious, aggravated, infamous, and heinous crime.” *Matter of Rodriguez-Palma*, 17 I&N Dec. 465, 469 (BIA 1980). The applicant’s robbery conviction therefore renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawful permanent resident spouse, parent, or child of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant’s children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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*, 138 F.3d at 1293 (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.

As noted above, in our previous decision we found that the record establishes extreme hardship to the applicant’s spouse and stepdaughter in the event of relocation, and this criterion will therefore not be addressed on motion. We found, however, that the record does not establish extreme hardship to a qualifying relative due to separation from the applicant. In part, we found that the record is insufficient to determine that the applicant’s spouse would be unable to meet her financial obligations in the absence of the applicant. We noted that the two psychological evaluations submitted to the record for the applicant’s spouse do not address the duration of the spouse’s relationship to the applicant as partners or that they reside apart half of each month. Our decision also noted that the evaluations do not explain how it is known that the applicant’s spouse is experiencing suicidal ideation if she has not articulated this herself. We further noted that a psychiatrist regularly visited by the applicant’s spouse, not the same individual who conducted the evaluations, did not submit any documentation. We noted that although the applicant’s mother claims she has been diagnosed with medical illnesses, that home care is provided by the applicant, and that she would be living in the streets without his support, the record contains no medical or financial documentation in support of her assertions. We found that it has not been established that the emotional hardship suffered by the applicant’s spouse, his mother, or his stepdaughter

would go beyond the common results of separation from a close family member due to inadmissibility.

On motion counsel asserts that the psychological evaluation shows that the applicant's spouse needs the applicant by her side to take care of her as she suffers from anxiety, panic and nervousness, and has trouble trusting people except the applicant. In his affidavit the applicant states he owns three companies and contracts with eight others, employing about 800 people, so if he is removed from the United States he would be forced to shut down operations leaving people without jobs and the resources his company provides.

The applicant further states that he is responsible for his family's financial stability and emotional support, and that his spouse is worried to the point of extreme depression that the family will be ripped apart. He states that his mother is extremely ill with diabetes, high blood pressure, and high cholesterol, and needs someone by her side at all times. He states that his father is out of work and is dependent for basic needs. He also states that he is financially aiding two sisters through school, that his family's lives are in his hands, and that he cannot have his sick mother working or deprive his sisters of education.

On motion, the questions raised with respect to the spouse's emotional and financial hardship have not been sufficiently addressed. No additional documentation or statement from the applicant's spouse has been submitted to the record. Nor has any additional information been submitted to support the applicant's assertion that his mother is ill, needing daily care. It is acknowledged that separation from a spouse, child, or stepparent nearly always creates a level of hardship. However, the applicant has not established that the emotional hardship suffered by his spouse, mother, or stepdaughter would go beyond the common results of separation from a close family member due to inadmissibility.

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 U.S. citizen spouse or stepdaughter or his lawful permanent resident mother 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 family member is removed from the United States or refused admission.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship to a qualifying relative upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

We therefore find 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 he merits this waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be granted and the underlying decision will be affirmed.

ORDER: The motion to reopen is granted and the underlying decision dismissing the appeal is affirmed.