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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 30 2014 OFFICE: CHICAGO 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before us on a motion to reopen and a motion to reconsider. The motion to reopen will be granted and the prior decision is affirmed.

The applicant is a native and citizen of Mexico 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 committed a crime involving moral turpitude. The applicant is the daughter of a lawful permanent resident and the mother of two U.S. citizens. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), to remain in the United States.

The Field Office Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship for a qualifying relative or that a favorable exercise of discretion was warranted in her case. He denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director,* dated February 22, 2011. We subsequently determined that the applicant had not established that her qualifying relatives would suffer extreme hardship if the waiver application were denied and dismissed the appeal. *Decision of the AAO*, dated February 28, 2013.

On motion, filed on March 27, 2013 and received by the AAO on May 14, 2014, counsel asserts that the adjudicating officer erred in applying a balancing test whereby negative factors were considered. In the alternative, counsel asserts that the adjudicating officer did not properly consider evidence of the applicant's qualifying relatives' extreme hardship. *Counsel's brief submitted with the Notice of Appeal or Motion (Form I-290B),* dated March 26, 2013.

A motion to reopen must state the new facts to be provided 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 Service 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). As the applicant provides new evidence, specifically a transcript from her criminal-court hearing, the motion to reopen is granted.

In support of the instant motion, the applicant submits a brief and an October 12, 2004 transcript from the applicant's criminal-court hearing titled "Plea and Sentence." The record of evidence also includes, but is not limited to: statements from the applicant, her spouse, her daughter and her brother-in-law; medical documentation relating to the applicant's mother; financial documentation; country-conditions information about Mexico; and other records relating to the applicant's theft conviction. The entire record was reviewed and all relevant evidence considered in reaching 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 –

> (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 the applicant pled guilty to Grand Theft, Florida Statutes § 812.014(2)(c)(1), a third degree felony, on October with adjudication of guilt withheld. She was sentenced to serve two days in jail, with credit for two days time served; fined $1,000 and required to pay a series of fees.

At the time of the applicant's conviction, Florida Statutes § 812.014 provided, in pertinent part:

> (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
>
> (a) Deprive the other person of a right to the property or a benefit from the property.
>
> (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.
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> . . . .
>
> (2) (a)(1). If the property stolen is valued at $100,000 or more; or
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> . . . .
>
> (c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 776.083, or s. 775.084, if the property stolen is:
>
> 1. Valued at $300 or more, but less than $5,000.

At the time of the applicant's conviction, Florida Statues § 775.082 provided the following penalty for a third degree felony:

> (3) A person who has been convicted of any other designated felony may be punished as follows:
>
> . . . .
>
> (d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

The record does not show that the Field Office Director erred in determining that the applicant's offense is a crime involving moral turpitude. Although on motion counsel notes that the applicant explained her innocence at her sentencing and pled guilty to protect her daughter, who actually was responsible for the theft, he does not contest the finding of inadmissibility. Instead, counsel asserts that the applicant's innocence should be considered a favorable factor in adjudicating her waiver. We therefore will not disturb the Field Office Director's finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

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

> (h) The Attorney General [Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –
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> . . . .
>
> (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 [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)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relatives in this proceeding are the applicant's U.S. citizen children and mother. Accordingly, hardship to the applicant or other family members will be considered only insofar as it results in hardship to one or more of these qualifying relatives. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 BIA 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 BIA 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 BIA 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 BIA 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).

On motion, counsel indicates that the current Administration promotes "family unity" and that this was not considered in the waiver adjudication, and that USCIS relied on outdated case law, citing *Silverman v. Rogers*, 437 F.2d 102 (1st Cir. 1970). However, we noted on appeal that family separation was considered in light of the applicant's other experiences. We consider the totality of

the circumstances in determining whether denial of admission would result in extreme hardship for a qualifying relative.

On appeal, the applicant's prior counsel addressed the impact of the applicant's removal on her adult daughter who, in an August 27, 2009 statement, indicated that she committed the theft for which the applicant has taken the blame. The applicant's daughter's statement, counsel asserted, reflected the guilt she would feel and the emotional hardship she would endure if the applicant is removed from the United States. He also maintained that the applicant's removal would lead to financial hardship for her daughter as it would require the closure of the applicant's beauty salon business, the primary source of income for the family. Prior counsel also contended that the applicant's removal would cause extreme hardship to her mother, who is physically and financially dependent on her.

We previously noted counsel's assertions regarding the emotional hardship that the applicant's daughter would experience if her actions contribute to her family's separation. These claims, however, are unsupported by objective corroborative evidence, such as psychological evaluations or other medical evidence, demonstrating how and to what degree the applicant's daughter's emotional health would be affected if the applicant were removed from the United States. Without such evidence, counsel's claims are not sufficient to meet the applicant's burden of proof in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In our previous decision, we found that the applicant failed to demonstrate the financial hardship of her removal on her family. We also found that no documentation of economic conditions in Mexico demonstrated the applicant would be unable to obtain employment that would allow her to financially assist her family from outside the United States. No new evidence was provided with the instant motion concerning financial hardship to the applicant's qualifying relatives.

Similarly, we were unable to determine on appeal the financial impact of the applicant's removal on her mother. We noted that, although the record demonstrates the amount of the applicant's mother's Social Security income five years ago, it fails to establish that her monthly Social Security payments are her only source of income or that she receives financial support from the applicant. Nonetheless, no new evidence was provided on motion addressing these issues. Therefore, based on the record before us, we are unable to find that separation from the applicant would result in extreme hardship for either her daughter or her mother.

To establish extreme hardship upon relocation, counsel on appeal pointed to the widespread violence in Mexico and the risks to the safety of the applicant's daughter and mother, should they move permanently to Mexico. Counsel also asserted that moving to Mexico would negatively affect the applicant's daughter's career goals and employment prospects. He further stated that the applicant's daughter has lived her entire life in the United States and that Mexico is a foreign country to her, with an unfamiliar culture and way of life. The applicant's prior counsel also made similar claims with respect to the applicant's adult son who has also lived in the United States since birth. However, the applicant's current attorney on motion does not make any assertions regarding the hardships of relocation on the applicant's children and provides no new evidence regarding the same.

We also previously acknowledged on appeal that relocation to Mexico would present difficulties for the applicant's daughter and son. Moreover, we considered that the applicant's mother has resided in

the United States for more than 20 years as a lawful permanent resident and that she no longer has family members in Mexico. However, we noted that the record does not indicate that her qualifying relatives would face a language barrier upon relocating to Mexico, and no country-conditions materials in the record showed that the applicant's son and daughter would be unable to pursue their educational or career plans in Mexico. On appeal, we also noted that the record fails to contain documentation that establishes the applicant's mother would be unable to obtain adequate medical care in Mexico, that she would find it difficult to obtain her prescription medications or that she would not receive her Social Security checks. On motion, no new evidence was provided to address these deficiencies. Therefore, we find that, considering these hardship factors in the aggregate, the record contains insufficient evidence to demonstrate that relocation to Mexico would result in extreme hardship to the applicant's qualifying relatives.

As the record does not demonstrate that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, she has failed to establish eligibility for a waiver under section 212(h) of the Act. We therefore will not consider negative factors, such as the applicant's criminal record or unauthorized employment, or positive factors, in this matter. After extreme hardship is established, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 299 (BIA 1996). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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 motion is granted and the underlying application remains denied.