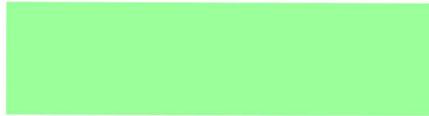


(b)(6)



U.S. Citizenship  
and Immigration  
Services



DATE: JAN 20 2015

Office: NEWARK

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Newark, New Jersey, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who entered the United States in 1996 without inspection or parole and who was later found to be 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 a crime involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his mother and siblings.

The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of Field Office Director*, January 20, 2012.

On appeal, submitted on July 17, 2013 and received by the AAO on August 26, 2014, counsel submits a Notice of Appeal or Motion (Form I-290B) indicating that a supporting brief will be filed within 30 days. However, as no brief has been submitted, evidence supporting the appeal consists of documentation submitted with the Application for Waiver of Grounds of Inadmissibility (Form I-601), including a hardship statement, naturalization certificate, medical information, and criminal history. The entire record was reviewed and considered in rendering this decision.

The applicant was found to be inadmissible under Section 212(a)(2)(A) of the Act, which 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.

On August [redacted] the applicant was convicted in [redacted] County, New Jersey of Third Degree Aggravated Assault under N.J.S.A. § 2C:12-1.b. He was sentenced to three years probation, given credit for time served (17 days in custody), and fined \$155.00.

At the time of the applicant's conviction, N.J.S.A. § 2C:12-1.b. provided, in pertinent part:

b. Aggravated assault. A person is guilty of aggravated assault if he:

.....

(7) Attempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances

manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury....

.....

Aggravated assault under subsections b.(1) and b.(6) is a crime of the second degree; under subsections b.(2), b.(7), b.(9) and b.(10) is a crime of the third degree.

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.)

For cases arising in the Third Circuit, the determination of whether a conviction is a crime involving moral turpitude requires a categorical inquiry into “the elements of the statutory state offense . . . to ascertain the least culpable conduct necessary to sustain conviction under the statute.” *Jean-Louis v. Holder*, 582 F.3d 462, 465-66 (3d Cir. 2009) (citing *Knapik v. Ashcroft*, 384 F.3d 84, 88 (3d Cir. 2004)). The “inquiry concludes when [the adjudicator] determine[s] whether the least culpable conduct sufficient to sustain conviction under the statute ‘fits’ within the requirements of a [crime involving moral turpitude].” *Jean-Louis, supra*, at 470. However, if the “statute of conviction contains disjunctive elements, some of which are sufficient for conviction of [a crime involving moral turpitude] and others of which are not, [an adjudicator] . . . examin[es] the record of conviction for the narrow purpose of determining the specific subpart under which the defendant was convicted.” *Id.* at 466. This is true “even when clear sectional divisions do not delineate the statutory variations . . . .” *Id.* In so doing, an adjudicator may only look at the formal record of conviction. *Id.* The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *See Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009); *see also Shepard v. U.S.*, 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the “charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented”). The Third Circuit does not permit inquiry beyond the record of conviction. *See Jean-Louis, supra*, at 473-82 (rejecting *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)).

The applicant does not dispute on appeal the determination that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the field office director.

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

The Attorney General [Secretary of Homeland Security] 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 --

(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 . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he 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.

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, which includes a U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen mother is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and the AAO then assesses whether a favorable 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 deportation, 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, 885 (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. 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.

The qualifying relative claims that, as a result of separation from the applicant, she will suffer extreme hardship due to the applicant's inadmissibility. The record evidence, however, fails to show that the applicant's absence would impose on a qualifying relative hardship beyond the

common or typical result of inadmissibility or removal. Asserting that she suffers from depression and is no longer able to work due to medical problems -- including hypertension, diabetes, hearing loss, and migraines -- the applicant's mother states that she lives with the applicant and he takes care of her, pays the rent, and pays a portion of her food expenses. The record contains several pages of medical records, consisting of tests and notations that are unexplained. The documents indicate that she had arm surgery in [REDACTED] and include results from hearing tests conducted in [REDACTED] but do not contain a clear explanation of the current medical condition of the applicant's mother. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we are not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. There is no evidence she would be unable to visit her son abroad to ease the pain of separation.

Further, the record reflects that, besides the applicant, the qualifying relative lives together with two of the applicant's siblings, an adult sister and adult brother. There is no indication that the applicant's mother requires home care or that any assistance she needs cannot be provided by her two other children in the same household. Based on the record, we are unable to conclude that the applicant's absence will impose emotional or medical hardship that rises to the level of "extreme."

Regarding the claim of financial hardship, there is no documentation of the qualifying relative's income, expenses, or other costs of daily living. 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)). We note the applicant's mother indicates her daughter is gainfully employed and able to pay a portion of household expenses, there is no indication that her other son is not earning income, and she herself is receiving Medicaid benefits and state assistance in the form of \$140 in food stamps and a debit card for \$180 per month. Further, although the qualifying relative claims a workplace injury contributed to her unemployment, there is no evidence regarding whether she receives either worker's compensation or social security disability payments. There is thus no evidence that the applicant's departure will cause his mother to become unable to meet her financial obligations. We cannot conclude based on the evidence provided that, were the applicant's mother to remain in the United States without the applicant due to his inadmissibility, she would suffer hardship beyond those problems normally associated with family separation.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the applicant has not shown that moving abroad would represent a hardship for his mother. Although the qualifying relative lives here with two of her children (plus the applicant), the record indicates that her mother and at least one other adult child, as well as additional relatives, are still living in El Salvador. While she has significant personal ties both in the United States and abroad, there are no statements on record from her two lawfully resident children here and no indication they are unable to visit her overseas or that she cannot make return trips to visit them. She is no longer working and owns no property here. Further, she offers no evidence of her expenses overseas, her financial resources, or other costs after relocation. There is

no evidence she has a serious medical condition for which treatment would be unavailable, and we note that relocating will leave her accessible to the son who currently cares for her and closer to other relatives in El Salvador. Therefore, based on a totality of the circumstances, we conclude the applicant has not established that his mother would suffer extreme hardship were she to relocate abroad to avoid separation from the applicant.

The evidence, when considered in the aggregate, fails to establish that the applicant's mother would suffer extreme hardship as a result of the applicant's inadmissibility. The record demonstrates that the applicant's mother faces 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. Although we are not insensitive to the applicant's mother's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

Having again found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

We further note that the applicant was convicted of Aggravated Assault, a violent or dangerous crime, and as such he would not be entitled to a favorable exercise of discretion except in extraordinary circumstances. See 8 C.F.R. § 212.7(d). The discretionary standard for violent or dangerous crimes was first articulated by the Attorney General in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002). The Attorney General, through his rule making authority, codified the discretionary standard for violent or dangerous crimes set forth in *Matter of Jean*. The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

Where the applicant has not established extreme hardship to a qualifying relative, he would also not merit a waiver as a matter of discretion pursuant to the heightened discretionary standard for violent or dangerous crimes, which requires a showing of exceptional and extremely unusual hardship to a qualifying relative.

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*NON-PRECEDENT DECISION*

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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.