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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-M-L-

DATE: NOV. 18, 2015

APPEAL OF MIAMI FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Cuba, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i) and § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Miami Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

In a decision dated April 16, 2015, the Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or a material misrepresentation; and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The Director then found the Applicant had not established that her qualifying relative, her lawful permanent resident spouse, would suffer extreme hardship as a result of her inadmissibility. The application was denied accordingly.

On appeal, the Applicant states that she believes her waiver was unfairly adjudicated because of the U.S. policy of not removing people to Cuba.¹ The Applicant states that separation from her family goes beyond the normal results of removal, because she would be removed to a country ruled by a communist dictatorship. The Applicant also asserts that the cases the Director cited are distinguishable from her case. Finally, the Applicant states that, though she is not diminishing her criminal conduct, her crime was a crime that many Cubans commit to come to the United States.

The record includes, but is not limited to: criminal records for the Applicant; a statement from the Applicant's spouse; a birth certificate for the Applicant's son, born in the United States on [REDACTED] and the Applicant's Form I-589, Application for Asylum and for Withholding of Removal, filed in immigration court on September 12, 2012. The entire record was reviewed on appeal.

¹ The Applicant specifically asserts that the interviewing officer violated her, and her family's, constitutional rights to due process and equal protection. Constitutional issues are not within our appellate jurisdiction; therefore this assertion will not be addressed in the present decision.

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Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

(1) The Attorney General (now Secretary of the Department of Homeland Security [Secretary]) may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record shows that on September 17, 2011, the Applicant attempted to enter the United States at the [REDACTED] by presenting a Cuban passport and U.S. lawful permanent resident card that did not belong to her. The Applicant was referred to secondary inspection, where she admitted that she paid \$7,000 for the documents and was to pay \$2,000 more upon her arrival. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for having attempted to procure admission to the United States through fraud or a material misrepresentation. The Applicant does not contest this finding of inadmissibility.

The Applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act, which states, in pertinent part:

[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 (the Board) stated in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

[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

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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.

The record establishes that on or about [REDACTED] 2011, the Applicant was convicted in the U.S. District Court, Southern District of Florida, [REDACTED] for the offense of Misuse of a Passport under 18 U.S.C. 1544. She was sentenced to time served and two years' supervised release. A conviction under 18 U.S.C. 1544 includes a maximum sentence of ten years in prison.

At the time of the Applicant's conviction, 18 U.S.C. 1544 stated, in pertinent part:

Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; ...

Shall be fined under this title, imprisoned not more than ... 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime)

For cases arising in the Eleventh Circuit, the determination of whether a conviction is a crime involving moral turpitude begins with a categorical inquiry that "depends upon the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant's particular conduct." *Itani v. Ashcroft*, 298 F.3d 1213, 1216 (11th Cir. 2002); *see also Vuksanovic v. U.S. Att'y Gen.*, 439 F.3d 1308, 1311 (11th Cir. 2006); *Sosa-Martinez v. U.S. Att'y Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2005).

Crimes involving dishonesty, concealment of one's true identity, and fraud have been found to be crimes involving moral turpitude. The Board has found that the mere act of obstructing an important function of a department of the government by deceitful means is sufficient to find moral turpitude. *Matter of Flores*, 17 I&N Dec. 225, 229 (BIA 1980); *see also Matter of D--*, 9 I&N Dec. 605, 608 (BIA 1962); *Matter of E--*, 9 I&N Dec. 421, 423-24 (BIA 1961). The Board has held that a false statement in writing that the individual knows is untrue, made with the intent to mislead a public official and to interfere with that official's duties, involves moral turpitude. *Matter of Jurado-Delgado*, 24 I&N Dec. 29, 34-35 (BIA 2006). Similarly, a false statement involving the use of another person's name and social security number in an application for a U.S. passport involves moral turpitude. *Matter of Correa-Garces*, 20 I&N Dec. 451, 454 (BIA 1992). From these cases, it can be concluded that the possession and use of documents for the purpose of establishing something false, be it a false identity, status, or occupation, is accompanied by a "vicious motive or corrupt mind" and constitutes a crime involving moral turpitude. *See, e.g., Omagah v. Ashcroft*, 288 F.3d

254, 259 (5th Cir. 2002) (noting crimes that include “dishonesty or lying as an essential element” tend to involve moral turpitude); *see also Itani v. Ashcroft*, 298 F.3d at 1215 (“Generally, a crime involving dishonesty or false statement is considered to be one involving moral turpitude.”) (citation omitted). Thus, we find that the Applicant’s conviction is a crime involving moral turpitude. The Applicant does not contest this finding of inadmissibility on appeal.

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

The [Secretary] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . 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 [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(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes an applicant’s U.S. citizen or lawfully resident spouse or parent. Section 212(h) of the Act allows for hardship to an applicant’s U.S. citizen or lawful permanent resident children to be considered with the waiver application. Section 212(i) of the Act, however, does not allow for hardship to an applicant’s U.S. citizen or lawful permanent resident children to be considered, unless it has been shown that hardship to an applicant’s children is causing hardship to an applicant’s U.S. citizen or lawful permanent resident spouse or parents. Because the waiver under section 212(i) is more restrictive, we will primarily focus our decision to the hardship suffered by the Applicant’s spouse. Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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-Morales*, 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 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.

The record contains references to hardship the Applicant's child would experience if the waiver application were denied. As stated above, Congress did not include hardship to an applicant's

children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the Applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the Applicant's child will not be separately considered, except as it may affect the Applicant's spouse.

In regards to hardship, the Applicant's spouse, a native of Cuba, states in a letter that he cannot relocate to Cuba because of the regime in power, and he cannot separate from the Applicant because he cannot raise their son on his own. He explains that he and the Applicant are alone in the United States raising their son. He also explains that he and the Applicant have been together on and off since childhood, and their relationship is very strong. The record also contains a Form I-589, stating that the Applicant had been persecuted in Cuba and fears persecution if she were to return, based on her political opinion and membership in a particular social group. Her Form I-589 does not include country conditions or other documentation to support her claims; thus we cannot ascertain the truthfulness of these statements or how the Applicant's claim would affect her spouse, her qualifying relative for purposes of her waiver application.

The assertions of the Applicant and her spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained 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 evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We find that the Applicant has not established extreme hardship to her lawful permanent resident spouse as required under section 212(i) of the Act. 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.

Cite as *Matter of A-M-L-*, ID# 15852 (AAO Nov. 18, 2015)