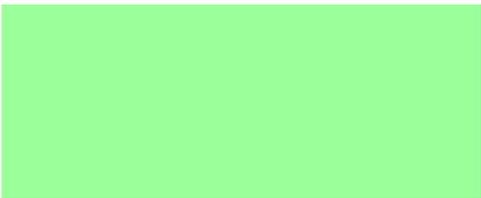


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

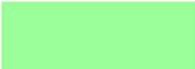


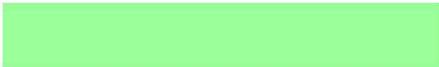
U.S. Citizenship
and Immigration
Services



Date: **MAY 21 2013**

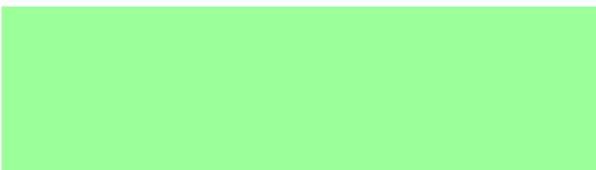
Office: AMMAN

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); Application for Permission to Reapply for Admission into the United States after Deportation or Removal filed under Section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg, Acting Chief
Administrative Appeals Office

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

The applicant is a native of Kuwait and a citizen of Jordan 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 pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), based on extreme hardship to her U.S. citizen husband and children. She also seeks Permission to Reapply for Admission into the United States after Deportation or Removal filed under Section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

On June 25, 2012, the Field Office Director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative.

On appeal, counsel for the applicant asserts that the Field Office Director failed to consider all of the evidence when making their determination in regards to the applicant's waiver application. Counsel does not contest the applicant's inadmissibility on appeal.

In support of the waiver application, the record includes, but is not limited to: legal briefs from counsel; a statement from the applicant; a statement from the applicant's spouse, biographical information for the applicant, his spouse and their children; untranslated school records for the applicant's children; medical records for the applicant's spouse; a letter from the applicant's son; medical records for the applicant's father; limited tax records for the applicant's spouse; information pertaining to the applicant's spouse's residence and employment; country conditions information for Jordan; and documentation in connection with the applicant's criminal conviction and immigration history. The entire record was reviewed and considered in rendering this decision.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 –

(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).

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.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708. The Eleventh Circuit, under whose jurisdiction this matter arises, has rejected the analytical approach of *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008). See *Fajardo v. U.S. Att’y Gen.*, 659 F.3d 1303 (11th Cir. 2011). Consequently, we may not consider evidence beyond the record of conviction in determining whether the offense constitutes a crime involving moral turpitude.

The record shows that on February 1, 2002 the applicant pled guilty to Conspiracy to Make False Statements to the Drug Enforcement Administration, 18 U.S.C. § 371. The applicant was sentenced to probation for a term of 2 years. At the time of the applicant’s convictions, 18 U.S.C. § 371, stated:

Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

As the statute under which the applicant was convicted is divisible, a modified categorical inquiry into the record of conviction is allowed to determine under which subsection the conviction was obtained. In this case, the judgment of conviction makes clear that the applicant was convicted of conspiring to defraud the United States, or more specifically to make false statements to the Drug Enforcement Administration. Defrauding the United States or any agency thereof is an essential element of the crime. The Board of Immigration Appeals (Board or BIA) has held that crimes “impair[ing] or obstruct[ing] an important function of a department of the government by defeating its efficiency or destroying the value of its lawful operations by deceit, graft, trickery, or dishonest means” involve moral turpitude. *Matter of Flores*, 17 I. & N. Dec. 225, 229 (BIA 1980); accord *Rodriguez*, 451 F.3d 60, 63 (2d Cir.2006). Put another way, a crime is morally turpitudinous if it involves “an affirmative act calculated to deceive the government.” *Id.* at 229; accord *Rodriguez*, 451 F.3d at 64. Moreover, the Eleventh Circuit held that “a crime involving dishonesty or false statement is considered to be one involving moral turpitude.” *Itani v. Ashcroft*, 298 F.3d 1213, 1215 (11th Cir.2002). As the applicant has not contested inadmissibility on appeal, and the record does

not show the determination to be in error, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

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

The Attorney General 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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) . . . 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 . . . ; 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)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and children are qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and 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 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*, 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.

On appeal, counsel states that the Field Office Director failed to consider “the required hardships faced by all eligible family members of the applicant.” The AAO will consider the hardships to each qualifying relative, in turn, both if they are separated from the applicant and if they were to relocate. The first qualifying relative is the applicant’s U.S. citizen husband. Counsel states that the applicant’s spouse works long hours for minimum wage in a convenience store as a manager, and as a result cannot afford to send enough money to Jordan to send his children to “fancy schools.” He also notes that the children live in poverty in Jordan. The only documentation in the record of the applicant’s spouse’s employment in the past year is a one sentence letter dated October 3, 2011 from [REDACTED] in Marietta, Georgia stating that the applicant’s spouse’s employment began on March 7, 2011 and that he was currently employed. The applicant’s spouse did not submit pays stubs from his employment or any other evidence of his current financial situation. In fact, the federal income taxes in the record from 2010 indicate the applicant’s spouse’s income totaled \$7,225, which does not indicate full-time employment or support counsel’s statement that the applicant’s spouse works long hours. Moreover it is not clear from the record where the applicant’s spouse currently resides. A G-28 in the record signed by the applicant on October 31, 2011 indicates an address in Greenville, NC, but a one sentence letter in the record dated October 24, 2011 from [REDACTED] states that the applicant resides in Marietta, GA with [REDACTED] and “pays half the rent, utilities, and all other expenses that occur.” The record does not contain a lease or utility bills, nor is there any documentation in the record to indicate the applicant’s spouse’s current income and expenses. This information does not provide a clear picture of any financial hardship that the applicant’s spouse may be experiencing.

Counsel states that the applicant’s spouse suffers when his children suffer, that he blames himself for “wrecking their lives” and that the children cannot live with him in the United States without their mother because he rents a room “barely big enough for himself.” Counsel does not specify how exactly the applicant’s spouse is suffering nor does he provide any documentation of how the applicant’s “suffering” has affected his ability to carry out his daily activities. Without further documentation or detail it is not possible to distinguish his hardship from the type of hardship normally associated with separation due to immigration inadmissibility

Counsel also states that the applicant’s spouse “is not well,” that his lungs are damaged and that he needs to have an operation but has not done so because he cannot afford it. A discharge note from [REDACTED] in New York, date December 13, 2009 diagnosed the applicant’s spouse with “pain” and “pneumothorax.” The discharge note states “rest, stop smoking,” “deep breathing exercise,” and “please do not fly in a plane for at least 2 months after your collapsed lung is treated.” The record contains a report from [REDACTED] in Amman Jordan dated December 23, 2009, indicating that the applicant’s spouse suffered from “emphysema.” Neither letter indicates that the applicant’s spouse requires surgery. Additionally, the AAO notes that significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in

establishing extreme hardship. In this case, however, the evidence on the record is insufficient to establish that the applicant's spouse suffers from a condition that is affected in any way by the applicant's inadmissibility. 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, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case as a result of the applicant's spouse's separation from the applicant is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

The record indicates that the applicant's three U.S. citizen children have resided with the applicant in Jordan since February 2004. Counsel has not stated what hardships the applicant's children would suffer if they were to be separated from the applicant. The only statement in the record regarding potential relocation of the children to the United States to reside with their father, and as a result, be separated from their mother, is not supported by documentary evidence. Counsel states that the applicant's spouse works long hours and thus cannot send for his children. As explained above, that statement is not supported by the record. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. As a result, the AAO cannot determine the degree of hardship the applicant's children would suffer if separated from their mother.

In regards to the hardship that the applicant's spouse would suffer if he were to relocate to Jordan, counsel states that the applicant's spouse cannot go back to Jordan as "his family are refuges from Palestine" and "he has no support system" or "means of providing for his family" in Jordan. No documentation was provided to illustrate the status of the applicant's spouse's family in Jordan. Additionally, counsel states that the applicant lives in a one-bedroom house, which she shares with her father, presumably trying to say that the applicant's spouse cannot reside there as well, although no documentation was provided to show where the applicant resides and why her spouse is unable to reside there as well. Counsel also states that the applicant's spouse would be considered "the enemy" in Jordan as he has resided in the U.S. for over 23 years. The only documentation submitted regarding country conditions in Jordan, pertain to the economy in Jordan and do not support counsel's assertion regarding the safety of the applicant's spouse in that country. Moreover, the AAO notes that the applicant's spouse has visited Jordan on numerous occasions and he does not report any safety concerns. The applicant has only provided general information about her husband's hardship, and the record lacks detail or supporting documentation to allow the AAO to fully assess the impact residence in Jordan would have on him. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Jordan, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the hardship to the applicant's children as a result of their relocation to Jordan, counsel states that the children live in poverty and will suffer as a result of their inability to enter the U.S. school system, "learn what it is like to be American" and "prepare themselves for a future." In regards to the children's financial situation, the AAO notes that there is no documentation in the record to support that the children live in poverty in Jordan. 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. at 165. Additionally, the only documentation of the children's education in Jordan was submitted without translation into English. 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The AAO notes that the fact that economic and educational opportunities for a child are better in the United States than in a foreign country does not establish extreme hardship. *See Matter of Kim*, 15 I&N Dec. at 89-90. Moreover, the record does not indicate that the children will suffer extreme hardship as a result of their education in Jordan or lack of education in the United States. The AAO recognizes the difficult situation faced by the children, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his 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 a waiver as a matter of discretion.

The AAO notes that the Field Office Director denied the applicant's Form I-212 in the same decision as the denial of her Application for a Waiver of Grounds of Inadmissibility. Where an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964). As the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and has failed to meet her

burden of proof that her inadmissibility results in extreme hardship to her U.S. citizen spouse, no purpose would be served in granting the applicant's Form I-212.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.