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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 1 0 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, New York District, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was 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 seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The acting district director determined that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated February 1, 2014.

On appeal, filed on February 28, 2014, and received by this office on January 13, 2015, the applicant contends that additional evidence is being submitted to show extreme hardship to his U.S. citizen family members. With the appeal the applicant submits a statement, an affidavit from his spouse, a letter from the spouse's physician, and psychological assessments of the applicant and of his spouse. The entire record was reviewed and considered in rendering this decision.

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 (the Board) 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.

The record reflects that on [redacted] 2005, in the Criminal Court of the [redacted], the applicant was convicted of Criminal Possession of Stolen Property in the Fifth Degree, in violation of New York Penal Law § 165.40, for which he was sentenced to 15 days imprisonment.

At the time of the applicant's conviction NYPL § 165.40 stated:

> § 165.40 Criminal possession of stolen property in the fifth degree
>
> A person is guilty of criminal possession of stolen property in the fifth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.
>
> Criminal possession of stolen property in the fifth degree is a class A misdemeanor.

To be convicted under § 165.40, a defendant must "knowingly possess[] stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof....." The crime qualifies as a type of larceny or theft, an offense that has long been recognized as involving moral turpitude. *Michel v. INS*, 206 F.3d 253, 263-64 (2d Cir. 2000) (affirming the Board of Immigration Appeals' determination that fifth-degree criminal possession of stolen property in violation of New York Penal Law § 165.40 is a crime involving moral turpitude). On appeal the applicant has not contested this finding of inadmissibility.

The record also reflects that on 2012, in the Criminal Court of the the applicant was convicted of Menacing in the Second Degree, in violation of New York Penal Law § 120.14, for which he was sentenced to 30 days imprisonment.

At the time of the conviction NYPL § 120.14 stated:

> § 120.14 Menacing in the second degree
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> A person is guilty of menacing in the second degree when
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> 1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
>
> 2. He or she repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death; or
>
> 3. He or she commits the crime of menacing in the third degree in violation of that part of a duly served order of protection, or such order which the defendant has actual knowledge of because he or she was present in court when such order was issued, pursuant to article eight of the family court act, section 530.12 of the criminal procedure law, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, which directed the respondent or

> defendant to stay away from the person or persons on whose behalf the order was issued.
>
> Menacing in the second degree is a class A misdemeanor.

In *Matter of Ajami*, 22 I&N Dec. 949 (BIA 1999) the Board of Immigration Appeals (BIA) addressed whether a stalking offense that involves the making of credible threats against another constitutes a crime involving moral turpitude. The BIA concluded that "the intentional transmission of threats is evidence of a vicious motive or a corrupt mind," and a crime encompassing such conduct involves moral turpitude. *Id.* at 952. Based on the foregoing we find support that the applicant's conviction for Menacing in the Second Degree is a crime involving moral turpitude. On appeal the applicant has not contested this finding of inadmissibility.

The record further reflects that the applicant entered the United States on November 21, 2001 under the visa waiver program by using the name and biographic information of another person. Thus we find the applicant is also inadmissible for fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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 that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

Although the applicant's child is a qualifying relative for purposes of a waiver under section 212(h) of the Act, the applicant requires a waiver under section 212(i) due to his entry to the United States by fraud or misrepresentation. 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 the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's spouse 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 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 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, 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 the applicant asserts that his spouse suffers from depression that will worsen if he is removed. In her affidavit the spouse states that the applicant is important to her daily life as they share concerns, frustration, and plans for the future, and that he provides emotional and financial support for her and their son. In an affidavit submitted with the appeal, the applicant's spouse states that she has clinically significant anxiety depressive condition since she found out that the applicant could be removed from the United States, and that she has been diagnosed with coronary artery disease, leading to a higher risk of heart attack and stroke, and thus without the applicant she will suffer as a single mother with heart disease. She further states that she wants to raise her son in a family atmosphere and that he will suffer from not having his father around as a role model.

A letter from the spouse's physician, dated February 11, 2014, states that she has been diagnosed with coronary artery disease and that she complains of anxiety and stress over the applicant's immigration situation, resulting in hand tremors, palpitations, and chest pain. The letter states that the spouse was referred to a psychologist and a cardiologist for testing. No subsequent medical documentation has been submitted, and there is no explanation from a physician of a prognosis for the spouse or of any treatment she may need that would require the applicant's physical presence in the United States.

A psychological assessment from sessions conducted on February 7 and 14, 2014, indicates that the spouse has a history of panic attacks since she was 18 years old and insomnia more recently. It states that the spouse reports loving the applicant despite past arguments that led to his arrest and conviction for menacing,[1] and that they attend parent-teacher conferences and events together, do errands and chores in partnership, and fear their son will suffer without the applicant as co-provider and caretaker. The assessment states that the spouse experiences clinically significant anxious depressive condition triggered by uncertainties over the applicant's immigration situation. It diagnoses the spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood, Panic Disorder, and insomnia, and recommends that she attend individual psychotherapy services with medication if there is no sufficient subsiding of symptoms.

The spouse's affidavits and the psychological assessment provided do not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. While the assessment indicates that the applicant's spouse suffers from Adjustment Disorder and Panic Disorder, there is little detail of the effects it would have on her daily life without the applicant. Although we are sympathetic to the family's circumstances and recognize that the applicant's U.S. citizen spouse will endure some hardship as a result of separation from the applicant, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

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[1] We note that as a result of the applicant's conviction for menacing, a protection order was entered against the applicant on 2012, ordering him to refrain from assaulting, stalking, harassing, threatening, or committing any other criminal offense against his spouse.

The applicant's spouse also asserts that the applicant provides economic support. The spouse states that since she has been diagnosed with coronary artery disease she cannot work as hard as she had before, so she needs the applicant's support. In an affidavit dated September 25, 2012, the spouse states that the applicant is a full-time construction worker earning $28,800 per year, and on the applicant's Biographic Information (Form G-325), signed on July 31, 2012, he indicated that he had been employed in general construction since 2011. However, no documentation has been submitted establishing the applicant's gainful employment in the United States or any financial contribution he has made to the household. Nor has any documentation been submitted establishing the spouse's current expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience some hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

We also find that the record does not establish that the applicant's spouse would experience extreme hardship if she were to relocate to Ecuador to reside with the applicant. The spouse states that she has lived her entire life in the United States, speaks little Spanish, and could not bear separation from her son, whom she states has never known any other place. She further maintains that she would be unable to obtain needed treatment for her medical condition or depression if she relocated to Ecuador.

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. The evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition, and no country information has been submitted to support the assertion that the spouse would be unable to obtain adequate medical care.

The psychological assessment states that the spouse reports the applicant will not have a job in Ecuador, that she and her son have been raised in the American lifestyle and educational curriculum in English, and that she will lose contact with her family if she relocates. It states that the spouse believes she and her son will lose opportunities by relocating to Ecuador and fears they will experience hardship there because of poor medical and pediatric services, high unemployment, low incomes, gender bias, and crime. However, the record does not contain any country condition information or other evidence to support the assertions of the applicant's spouse, and therefore does not establish that safety, economic, and health concerns regarding relocating to Ecuador would rise to the level of extreme hardship for the spouse.

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 will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although we are

not insensitive to the situation of the spouse, the record does not contain sufficient evident to establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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.