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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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Date: **JUL 06 2011** Office: BANGKOK, THAILAND

File:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Australia who was found to be inadmissible to the United States under section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having been convicted of committing a crime involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

On appeal, the applicant submits a psychological report, letters, and conviction certificates, which are provided to demonstrate extreme hardship to a qualifying relative and the applicant's good character.

We will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing a crime involving moral turpitude.

The record reflects that on January 28, 1998, the applicant was convicted of fraud (dishonestly gain benefit/advantage) in violation of section 408(C)(1)(b) of the Criminal Code of Australia. He was ordered to pay a fine, make restitution, and serve eight days imprisonment.

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 . . . 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-

....

(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.)

Section 408C(1)(b) of the Criminal Code 1899 of Australia, the provision under which the applicant was convicted, states that:

A person who dishonestly . . . obtains property from any person . . . commits the crime of fraud.

. . .

(3) For the purposes of this section—

(a) property, without limiting the definition of property in section 1, includes credit, service, any benefit or advantage, anything evidencing a right to incur a debt or to recover or receive a benefit, and releases of obligations; and

(b) a person's act or omission in relation to property may be dishonest even though—

- (i) he or she is willing to pay for the property; or
- (ii) he or she intends to afterwards restore the property or to make restitution for the property or to afterwards fulfill his or her obligations or to make good any detriment; or
- (iii) an owner or other person consents to doing any act or to making any omission; or

(iv) a mistake is made by another person; and

(c) a person's act or omission in relation to property is not taken to be dishonest, if when the person does the act or makes the omission, he or she does not know to whom the property belongs and believes on reasonable grounds that the owner can not be discovered by taking reasonable steps, unless the property came into his or her possession or control as trustee or personal representative; and

(d) persons to whom property belongs include the owner, any joint or part owner or owner in common, any person having a legal or equitable interest in or claim to the property and any person who, immediately before the offender's application of the property, had control of it; and

(e) obtain includes to get, gain, receive or acquire in any way; and

(f) if a person obtains property from any person or induces any person to deliver property to any person it is immaterial in either case whether the owner passes or intends to pass ownership in the property or whether he or she intends to pass ownership in the property to any person.

With regard to his criminal offense, the applicant states in an undated letter that he and his wife were unable to obtain a bank loan to consolidate their debt. Through an advertisement he located a company, which he thought was a finance broker, for financial assistance. The applicant states that he was advised to change his last name to his mother's maiden name. When he questioned doing this, the applicant states that he was told that changing his name was "just bending the truth a little," and was assured that it was alright. The applicant further states in the letter that:

So I went and changed my name and went back to see [the company] after I paid them more money and they told me to go an [sic] apply for a credit card[,] it is easier to get one. I thought[,] oh well[,] I will see what happens[,] and I got a \$3000 credit card. I was paying the credit card off and then I was going to cancel it. Then a detective rang me up to ask me about the situation so I went in to see him . . . he did inform me that it was illegal to do what I had done and he told me that he would have to charge me. He charged me with fraud only because I changed my name . . .

In the instant case, though intent to defraud is not an explicit statutory element in section 408C(1)(b) of the Criminal Code 1899 of Australia, the conduct for which the applicant was convicted involves intent to defraud a credit card company. The applicant knew that he was unable to obtain a bank loan in his name, and we observe that the applicant admits in his letter that but for his legally changing his name, he would not have qualified for a credit card. Whether or not the applicant has accurately revealed all the conduct underlying his conviction, we note, at a minimum, that the applicant used a different identity in order to induce a credit card company to extend a line of credit, and that he knew his conduct would have the effect of misleading the company to his financial benefit and potentially to its detriment.

In *Matter of Flores*, 17 I&N Dec. 225, 228 (BIA 1980), the Board stated that:

We have held that where fraud is inherent in an offense, it is not necessary that the statute prohibiting it include the usual phraseology concerning fraud in order for it to involve moral turpitude. *Matter of R--*, 5 I & N Dec. 29 (BIA 1952; A.G.1952; BIA 1953); see also *Matter of Martinez*, 16 I & N. Dec. 336 (BIA 1977); *Matter of B--*, 7 I & N Dec. 342 (BIA 1956); *Matter of D--*, 2 I & N. Dec. 836 (BIA 1947); *Matter of M--*, 1 I & N. Dec. 619 (BIA 1943); but see *Matter of Lethbridge*, 11 I & N. Dec. 444 (BIA 1965); *Matter of G--*, 7 I & N. Dec. 114 (BIA 1956).

Thus, the Board has found that where fraud is inherent in an offense, it is not necessary for the statute to expressly require intent to defraud as an element of the crime. *See also Matter of Serna*, 20 I&N Dec. 579 (BIA 1992). Further, the Board held in *In Re Max Alejandro Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996), that collateral attacks on a conviction do not operate to negate the finality of the conviction unless and until the conviction is overturned. (citations omitted). A collateral attack on a judgment of conviction cannot be entertained “unless the judgment is void on its face,” and “it is improper to go behind the judicial record to determine the guilt or innocence of an alien.” *Id.*

In consideration of the foregoing, we find that fraud is inherent in the applicant’s crime. The applicant’s conviction under section 408C(1)(b) of the Criminal Code 1899 of Australia constitutes a crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . 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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in this case are the applicant’s U.S. citizen wife and stepson and stepdaughters. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *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*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

In rendering this decision, the AAO will consider all of the evidence in the record, which consists of letters and other documentation.

The applicant's wife conveys in a letter dated January 11, 2008 that she has a close relationship with her father, mother, brother, and stepmother, and that they all have serious health problems. She states that she visits her father, who lives with her sister, over the weekend at least once a month. The applicant's wife further states that she has a close relationship with her children, who now adults with their own families. She avers that the applicant supports her emotionally and financially. The applicant cites *Loving vs. Virginia*, 388 U.S. 1 (1967) in support of her argument that the denial of the waiver application is a violation of her Fourteenth Amendment right to the pursuit of happiness under the U.S. Constitution. We note that in an undated letter the applicant's wife states that she is devastated having to live without her husband.

Furthermore, the applicant's wife conveys in the letter dated April 4, 2011 that her parents continue to have health problems, and that her daughter, [REDACTED] has Celiac Disease and was diagnosed with anti-nuclear antibodies, which damaged her lower bowel, and that tests will be performed to check on her kidneys, liver, and other major organs. She conveys that her daughter's body is not absorbing nutrients or medication due to Celiac Disease. The applicant's wife states that her daughter takes medication for thyroid problems. The applicant's wife states that her daughter is divorced and that she takes care of her two grandchildren when her daughter is not feeling well. The applicant's wife maintains that she is the family member who lives closest to her daughter. Though the applicant's wife indicates that she will submit a letter from her daughter's doctor, we note that no such letter is in the record.

The applicant states in the e-mail dated March 4, 2011, that his wife's daughter, [REDACTED] was diagnosed with Celiac Disease and that Leslie was told that her lower bowel is damaged and her kidneys, liver, and bladder may also be damaged. The applicant conveys that [REDACTED] is divorced and has two small children, and lives two doors down from his wife. He states that this wife's mother had been in the hospital and that her father is doing well after having major neck surgery in January. The applicant states that his wife was in Australia last year for 12 months, but went home in May 2010. He conveys that he was about to organize her return to Australia in April, but that he will not take her away from her family, especially her daughter, who needs her to take her to the hospital and take care of her children. The applicant asserts that he is worried that his wife will have another stroke or heart attack due to stress.

Lastly, [REDACTED] states in the letter dated March 2, 2011 that the applicant's wife had a stroke in 2007, and has dizziness and anxiety since then. He avers that she also had esophageal gastritis over the last few years.

The stated hardship factors in the instant case are the emotional and financial impact to the applicant's wife if she remains in the United States without the applicant. While the record reflects that the applicant provided some financial support to his wife, we cannot determine from the record whether the applicant's wife actually requires any financial assistance in meeting her household expenses. Further, the applicant's wife asserts that she has a close relationship with her husband, and letters from the applicant's wife's daughter and mother-in-law are consistent with her assertion. In addition, we note that the record conveys that the applicant and his wife's relationship began through an on-line dating service whereby they communicated with each other from February 2007 to September 2007, and the record indicates that the applicant married his wife in February 2008, and the applicant conveys that they lived together in Australia for a year in 2009.

Though substantial weight is given to the separation of spouses from one another in the hardship analysis, we observe that the evidence in the record concerning hardship to the applicant's spouse if she remains in the United States without her husband does not show it to be extreme. The applicant's wife is stressed about taking care of her daughter; however, the record does not show that the applicant's spouse has a serious health problem for which she requires the applicant to be a caregiver.

Finally, with regard to the applicant's wife's assertion that the denial of waiver application is a burden on her fundamental right to the pursuit of happiness, we observe that, like the Board of

Immigration Appeals, this office cannot rule on the constitutionality of laws enacted by Congress, and we are bound by the precedent decisions cited herein. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992).

In sum, when the asserted hardship factors are considered collectively, we find they fail to demonstrate extreme hardship to the applicant's wife if she remains in the United States without her husband.

With regard to the hardship to the applicant's wife if she joins the applicant to live in Australia, the applicant's wife contends that she will experience emotional hardship if separated from her son and daughters, and from her family members who have serious health problems. However, the emotional hardship that the applicant's wife will endure as a result of family separation is not of the same degree as that of minor children who are dependent on a parent for financial and emotional support. Also, the applicant's wife does not state that she serves as a care provider for any of her family members with serious health conditions. We note that even though [REDACTED] conveys that the applicant's wife has helped her mother, the record reflects that the applicant resides in Iowa while her mother lives in Nebraska. Thus, based on the evidence in the record, we cannot find that the emotional hardship that the applicant's wife would experience as a result of relocation to Australia would be extreme.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act.

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

In proceedings for application for 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

DATE: JUL 06 2011

OFFICE: LOS ANGELES

FILE: [Redacted]

IN RE: [Redacted]

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:

[Redacted]

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.

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Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Taiwan 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 crimes 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 reside in the United States with his U.S. citizen spouse and child.

The director determined that the applicant failed to establish extreme hardship to a qualifying relative. The director further determined that the applicant failed to establish that a favorable exercise of discretion is appropriate in his case. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 10, 2008.

On appeal, counsel asserts that the applicant's qualifying relatives would suffer extreme hardship if the applicant were denied admission to the United States. Counsel further asserts that the applicant merits a favorable exercise of discretion. *Appeal Brief*, dated January 5, 2009.

In support of the waiver application, the record includes, but is not limited to, the applicant's conviction records, financial documentation, the applicant's marriage certificate, the applicant's stepdaughter's birth certificate, the applicant's spouse's naturalization certificate, a letter from the applicant's spouse, a letter from the applicant's stepdaughter, letters from the applicant, and letters of support from the applicant's family members and employer. 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). This case arises in the Ninth Circuit, and the Ninth Circuit Court of Appeals has adopted the realistic probability standard. See *Nicanor-Romero v. Mukasey*, 523 F.3d 992, 1004-1007 (9th Cir. 2008).

The record reflects that on January 23, 2002, the applicant was convicted in the United States District Court for the Southern District of New York of conspiracy to traffic in counterfeit Microsoft software, a class D felony, in violation of 18 U.S.C. § 371 and using counterfeit Microsoft marks, a

class C felony, in violation of 18 U.S.C. § 2320. The applicant was sentenced to time served in prison, and ordered to pay a restitution of \$40,000.00 (Case No. Cr. 00176-002).

At the time of the applicant's conviction, 18 U.S.C. § 371 provided, in pertinent part:

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.

Further, 18 U.S.C. § 2320 provided, in pertinent part:

Whoever intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services shall, if an individual, be fined not more than \$2,000,000 or imprisoned not more than 10 years, or both, and, if a person other than an individual, be fined not more than \$5,000,000. In the case of an offense by a person under this section that occurs after that person is convicted of another offense under this section, the person convicted, if an individual, shall be fined not more than \$5,000,000 or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

Title 18 U.S.C. § 371 is divisible because it “creates two crimes, first, a conspiracy to commit an offense against the United States, and, second, a conspiracy to defraud the United States in any manner or for any purpose.” *Matter of E*, 9 I&N Dec. 421, 423 (BIA 1961). A conspiracy to commit an offense involves moral turpitude if the substantive offense involves moral turpitude. 9 I&N Dec. 421, 423. For example, in *Matter of Gaglioti*, the BIA found that the alien's conviction for conspiracy to establish gaming devices did not involve moral turpitude because the underlying offense did not involve moral turpitude. 10 I. & N. Dec. 719 (BIA 1964).

In *Matter of Kochlani*, 24 I&N Dec. 128, 131 (BIA 2007), the BIA determined that trafficking in counterfeit goods in violation of 18 U.S.C. § 2320 is a crime involving moral turpitude because it is “tantamount to commercial forgery” and involves the theft of someone else's property in the form of a trademark. The BIA noted that, “As Congress made clear . . . ‘Trademark counterfeiting . . . defrauds purchasers, who pay for brand-name quality and take home only a fake,’ but it also exploits mark holders, since ‘counterfeiters [can earn] enormous profits . . . by capitalizing on the reputations, development costs, and advertising efforts of honest manufacturers at little expense to themselves.’” *Id.* (citation omitted). Therefore, the applicant's convictions for conspiracy to traffic in counterfeit Microsoft software, in violation of 18 U.S.C. § 371, and using counterfeit Microsoft marks, in violation of 18 U.S.C. § 2320, are crimes involving moral turpitude, and the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not dispute his inadmissibility on appeal.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . 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

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 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 U.S. citizen spouse and stepdaughter are the 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-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 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*, 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). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant asserts that he tries to help his spouse by taking her parents to their doctor’s visits and picking her daughter up from school. He states that he helps pay for their utilities and rent. He notes that his spouse relies on him emotionally and financially. *Applicant’s Declaration*, dated May 1, 2008.

The applicant’s spouse asserts that her elderly parents who have health conditions reside with her. She states that her father has “heart problems and high blood pressure” and her mother has “a serious back problem.” She states that she was a single mother and developed a dependence on drugs to function. She states that the applicant helped her overcome these issues by taking her parents to their doctor’s visits and picking up her daughter from school. She notes that the applicant also helped her wean herself from dependency on drugs. She contends that her life “will become even more miserable than before” if the applicant is denied admission. She states that she has no one else to help with her parents and she relies on the applicant’s income. *Declaration of Tina Lin*, dated April 24, 2008.

The AAO notes that the applicant has failed to provide any evidence of the financial hardships his spouse and stepdaughter will suffer if he is denied admission. First, the record does not show the applicant’s spouse’s major household expenses. Second, the applicant has not submitted earnings statements, W-2 Forms, or any other documentation as evidence of his wages. The record contains a

letter, dated November 2, 2001, verifying the applicant's employment at a restaurant. However, as of the time the applicant filed his Biographic Information Form he was unemployed. *See Form G-325A*, dated October 19, 2006. The applicant has not stated his current employer and occupation. In sum, the applicant has not demonstrated that he is contributing financially to the household and his spouse's household expenses could not be met without his assistance. 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)). Therefore, the AAO cannot determine that the applicant's spouse and stepdaughter would suffer financial hardship if they were separated from the applicant.

The AAO notes further that the applicant has not submitted evidence that his mother-in-law and father-in-law reside with him and his spouse. The applicant's spouse's biographic information sheet, dated October 19, 2006, reflects that her father is deceased. The applicant has failed to resolve this inconsistency with evidence of his father-in-law's residence. Moreover, the applicant has not shown that his mother-in-law and father-in-law are suffering from medical complications, and they require her assistance. The applicant has not submitted medical documentation of their health conditions. Accordingly, the AAO cannot determine that the applicant's spouse would suffer from the additional emotional and financial hardships of caring for her elderly parents if she is separated from the applicant.

The AAO acknowledges that the applicant's spouse and stepdaughter will experience emotional hardship if they are separated from the applicant as a result of his inadmissibility, and is sympathetic to their situation. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). While we will give significant weight to the hardship of separation, this factor alone does not rise to the level of extreme hardship. The applicant has not demonstrated that the hardship of separation is atypical and rises to the level of extreme hardship. Based on the foregoing, the applicant has not demonstrated that his spouse and stepdaughter will suffer extreme hardship upon separation from the applicant.

Furthermore, the applicant has failed to establish extreme hardship to his spouse and stepdaughter if they relocate to Taiwan to maintain family unity.

On appeal, counsel asserts that if the applicant's spouse relocates to Taiwan, she will suffer hardships related to relocating with her elderly parents. Counsel further asserts that the applicant's 10-year-old stepdaughter, who was born in the United States, would suffer hardships related to relocating to a foreign country. *Appeal Brief* at 6.

The AAO will consider hardship to the applicant's in-laws insofar as it results in hardship to the applicant's spouse. However, as discussed, the applicant has not submitted evidence of their

residence and medical conditions. The AAO acknowledges that the applicant's stepdaughter, who is now 13 year old, would suffer from the impacts of adjusting to a new culture and school system. However, neither the applicant, the applicant's spouse or the applicant's stepdaughter have discussed these impacts and the extent of the hardship she would suffer from the adjustment. In fact, the statements from the applicant and his qualifying relatives are completely silent on the issue of relocation to Taiwan. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *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). Therefore, the applicant has failed to demonstrate that his spouse or stepdaughter would suffer extreme hardship upon relocation to Taiwan.

In conclusion, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his spouse and stepdaughter, as required for a waiver under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 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. The waiver application is denied.