



U.S. Citizenship
and Immigration
Services

H6

[REDACTED]

Date: **NOV 06 2012** Office: MONTERREY FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (a)(9)(B)(v) respectively, and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

If you believe the AAO inappropriately applied the law 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 with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application and application for permission to reapply were denied by the Field Office Director, Monterrey, Mexico, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 record shows that the applicant was also found to be inadmissible pursuant to section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii), for having been unlawfully present in the United States for more than one year and again seeking readmission within 10 years of his last departure from the United States. The applicant was further found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed under any provision of law and seeking admission within 10 years of the date of his departure or removal. The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h), (a)(9)(B)(v), and permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his U.S. citizen wife and U.S. citizen child.

In a decision dated December 3, 2010, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that his U.S. citizen wife would experience extreme hardship as a consequence of his inadmissibility. The field office director denied the applicant's Form I-212 in the same decision.

On appeal, counsel for the applicant asserts that the field office director erred by not applying the extreme hardship standard under section 212(h)(1)(B) to the facts of the applicant's case. Counsel further indicated that the field office director failed to consider in his decision hardship to the applicant's U.S. citizen child. Additionally, counsel avers that the evidence outlining financial, emotional, medical and psychological difficulties demonstrates extreme hardship to his U.S. citizen wife and child.

The record contains, but is not limited to: counsel's brief; statements from some of the applicant's family members and friends, including his U.S. citizen wife; medical reports; psychological evaluations of the applicant's U.S. citizen wife; copies of pay stubs and employer letters; a copy of the birth certificate of the applicant's U.S. citizen son; documentation regarding the applicant's administrative removal proceeding; and documentation regarding the applicant's criminal history.

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 has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible

The Board of Immigration Appeals (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.

(Citations omitted.)

The record shows that on May 25, 2005, the applicant was convicted in the Circuit Court of Henry County, Virginia, of grand larceny in violation of Va. Code Ann. § 18.2-95. The field office director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility from this conviction on appeal, and the record does not show the finding to be erroneous, the AAO will not disturb the finding of the field office director.

The record further shows that on September 13, 2005, the applicant was convicted in the Juvenile and Domestic Relations District Court of Franklin County, Virginia, of engaging in consensual sexual intercourse with a child 15 years of age or older, in violation of Va. Code Ann. § 18.2-371(ii). The field office director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding to be erroneous, the AAO will not disturb the finding of the director.¹ See *Prudencio v. Holder*, 669 F.3d 472, 485 (4th Cir. 2012) (holding that a conviction under Va. Code Ann. § 18.2-371(ii) constitutes a conviction of a crime involving moral turpitude).

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

¹ The record reflects that the director acknowledged in his December 3, 2010, decision the applicant's May 10, 2005, conviction for contributing to the delinquency of a minor when considering inadmissibility. Because the AAO has found that the applicant's convictions for grand larceny and engaging in consensual sexual intercourse with a child render him inadmissible to the United States, it need not consider whether a conviction for contributing to the delinquency of a minor, in violation of Va. Code Ann. § 18.2-371(i), also renders the applicant inadmissible.

(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

The AAO begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). In this case, the applicant asserts that denial of his admission will impose extreme hardship upon his U.S. citizen wife and child.

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 the 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 is 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 asserted hardship factors in this case are the medical, emotional, and financial impact to the applicant’s wife and child if they remain in the United States without him. On appeal, counsel for the applicant asserts that the applicant’s wife is experiencing serious medical conditions, that she is totally dependent on the applicant for emotional and financial support, and that she will experience extreme hardship due to the applicant’s inadmissibility. Counsel further states that if the applicant is denied admission, the applicant’s wife will have to act as a single parent and care for their child on her own. The record contains various medical evaluations of the applicant’s wife which are sufficient to establish that she has been diagnosed with a major depressive disorder. The 2007 medical reports concerning the applicant’s wife’s condition, however, state that her condition improved after treatment and that she is able to function independently. Nevertheless, the AAO notes that the medical documentation submitted as evidence of her depressive disorder diagnosis is from 2006 and 2007, when the applicant’s wife was 17 years old, does not provide enough detail about the severity or recurrence of her condition for the AAO to make a determination as to whether the condition would cause extreme hardship. The applicant’s appeal was filed in January 2011, but no medical evaluations were included in the record beyond 2007. The AAO recognizes that the applicant’s wife will experience some hardship associated with her condition if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme.

Additionally, though the applicant’s wife avers that she has been diagnosed with a bipolar disorder, the evidence in the record is inconclusive. A medical report from February 2, 2007, indicates that when the applicant’s wife was first admitted to the [REDACTED] Salem, Virginia, she claimed to have a bipolar disorder. The record reflects that the treating physician initially

indicated that she might have a bipolar disorder and stated his interest in further examining the applicant's wife. However, the treating physician's findings and conclusions, as reflected on page 5 of the report, rule out the possibility of bipolar manic depressive disorder. The AAO notes that the doctor on record did not explain whether there are any differences between a bipolar disorder and a manic depressive bipolar disorder. Additionally, neither the applicant nor his wife have asserted that there is a difference between the two diagnoses. Given that the record is inconclusive as to the bipolar disorder diagnosis, the AAO finds the documentary evidence insufficient to show that the applicant's wife was also diagnosed with a bipolar disorder.

With regard to the financial hardship experienced upon separation, both the applicant and his wife have asserted that she depends on the applicant's financial support in order to meet their household needs and to care for their child. However, there is insufficient evidence in the record to substantiate this claim, or to show that without this financial support, the applicant's wife and daughter would experience extreme hardship. No evidence detailing expenses related to the household or to the care of the applicant's family has been submitted. The applicant's wife has indicated that she works as a customer service representative and earns \$9.25 an hour. However, other than a general employment verification letter from the employer, no corroborating evidence of her pay has been submitted to demonstrate the inadequacy of her earnings in providing for her household. Moreover, though the applicant and his wife have also asserted that the applicant is employed in Mexico, there is no evidence in the record demonstrating that he is unable to meet the family's financial needs through his employment abroad. 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)).

In letters and statements from the applicant's wife and friends of the family, it is asserted that the applicant's wife has a good, stable relationship with the applicant and that she depends upon him for emotional and psychological support. The applicant's wife stated that the applicant was involved in her daily care and that they are both interested in settling down and building a good life together in the United States for the well-being of their family and child. The AAO acknowledges that the applicant's wife and daughter will experience emotional hardship if they remain in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant and his wife, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The applicant's wife further states in a statement dated April 10, 2010, that the applicant's child has been diagnosed with a Patent Foramen Ovale (PFO), which is an opening between the left and right atria of the heart that fails to close naturally soon after birth. She asserts that the condition needs to be closely monitored because it could deteriorate and require surgery if left untreated. However, medical reports in the record indicate that the condition is presently stable and does not affect the daily life of the child. The report further indicates that there are no symptoms associated with this

condition. Though the record indicates that the child's condition may require a follow-up visit two years after birth to determine if additional treatment is necessary, there is no evidence that the child needs additional care at this time. In fact, in a medical report from the [REDACTED] dated February 22, 2010, the child's physician indicated that the child is "[d]oing well" and is "[g]rowing and thriving." Other medical reports further support this conclusion by noting that the child's heart rate and rhythm are normal and that the child does not present any respiratory difficulties. The AAO recognizes the concern that this medical diagnosis may cause, especially in the case of a young child. However, the current documentation submitted as part of the record is not sufficient to support the applicant's wife claim that their daughter's medical diagnosis would cause the child extreme hardship in the absence of the applicant or would cause her extreme hardship in having to care for a child with this condition by herself.

With regards to joining the applicant to live in Mexico, the asserted hardship factors to the applicant's wife and child are medical hardships, language barriers, poor economic conditions, and emotional hardship to the wife resulting from family separation. Here, the record lacks adequate documentation to support these claims. Other than the applicant's wife's general assertions regarding the absence of medical care in Mexico, there is no evidence in the record that she could not obtain treatment for her medical conditions abroad, that she would be unable to cover medical expenses abroad, that the availability of healthcare in the area where they would relocate is lacking, or that she would be unable to find a medical doctor who could communicate with her in the English language. That is, no evidence was provided to illustrate that the applicant's wife could not obtain the care she needs in that country. Similarly, the record is insufficient to establish that the applicant's child's condition rises to a level where taking her away from her doctors in the United States would be detrimental to her health. To the contrary, the record does not even establish that the applicant's child must see a doctor for her condition on a regular or frequent basis. As stated above, the record also fails to establish that medical care in Mexico would be insufficient to treat the applicant's child's condition were she to require surgery.

Additionally, the record does not include documentation to support the applicant's wife's claims that she would experience depression due to her inability to speak the Spanish language. The applicant's wife also stated, during her psychosocial assessment, that the economic conditions in Mexico are such that she would be unable to find employment in that country. However, the record is insufficient to demonstrate the claims made by her pertaining to economic conditions in Mexico. In fact, the record does not include supporting documentary evidence of the country conditions mentioned in the above-referenced assessment. The record also does not contain documentation supporting the applicant's wife's assertion that there are no schools for their child in the area where they would relocate. Consequently, the AAO finds that the record does not include sufficient evidence of economic, medical, and emotional hardship, which in their totality, establish that the applicant's wife and child would experience extreme hardship upon relocating to Mexico.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's wife and child caused by the applicant's inadmissibility to the United States. 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 an application for waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.

The AAO further notes that in *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), it was held that an application for permission to reapply for admission will be denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act. Thus, no purpose would be served in further review of the applicant's Form I-212 the application. Consequently, the appeal of the field office director's denial of the Form I-212 will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.