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 2 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

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:

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 Field Office Director, Newark, New Jersey, 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 Costa Rica 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 is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen spouse.

The field office 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 Field Office Director*, dated October 28, 2014.

On appeal the applicant asserts that the field office director erred in denying the waiver application and that she is now pregnant with the birth of her first child expected in July 2015. The applicant also states that the Secretary of Homeland Security has instructed U.S. Citizenship and Immigration Services to provide additional guidance on defining extreme hardship. With the appeal the applicant submits a statement, a copy of a November 20, 2014 memorandum from the Secretary of the Department of Homeland Security entitled Expansion of the Provisional Waiver Program, a statement from the applicant's spouse, financial documentation, a medical referral form dated November 15, 2014 confirming the applicant's pregnancy, and information regarding the applicant's probation compliance. 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.

(Citations omitted.)

The record reflects that the applicant entered the United States on April 16, 2000, with a B-2 visitor visa. On in Superior Court of New Jersey, the applicant pled guilty to Shoplifting in the Third Degree in violation of New Jersey Statute 2C:12-11b(1). The applicant was sentenced to three years of probation and fines totaling $593.

At the time of the applicant's conviction, N.J.S.A. 2C:20-11 stated as follows:

> Shoplifting
>
> b. Shoplifting. Shoplifting shall consist of any one or more of the following acts:
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> (1) For any person purposely to take possession of, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the full retail value thereof.

The Board of Immigration Appeals has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). In *In re Jurado-Delgado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. The reasoning in *Jurado-Delgado* is applicable to the applicant's case in regards to her New Jersey conviction for shoplifting. She thus is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant has not contested the finding of inadmissibility.

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case.[1] Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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).

The applicant submits a copy of a November 2014 memorandum from the Secretary of Homeland Security, which directs USCIS to provide additional guidance on the definition of "extreme hardship." The applicant asserts that a change in the definition of extreme hardship is pending as a result of the memorandum and the matter should be remanded to the field office director in light of the pending change. We note that the memorandum refers to many of the factors the Board has found relevant in determining whether extreme hardship has been established and directs USCIS to issue a guidance clarifying and explaining the factors to be considered, but does not purport to change the definition of extreme hardship, which the Board and federal courts have addressed in numerous decisions.

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

[1] As of today, the applicant has not submitted any documentation to establish the birth of a U.S. citizen child or evidence to establish what, if any, hardships, that child would experience were the applicant unable to obtain a waiver of inadmissibility.

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 she has lived more than half of her life in the United States, has proved rehabilitation from her only conviction, and is married to a U.S. citizen who will suffer extreme hardship if she is removed. She further maintains that her spouse will suffer extreme hardship if he has to raise his child in the United States without her or is forced to be separated from his child if the child leaves the United States with the applicant. On Form I-601 the applicant contends that she will be devastated if she is torn from her spouse and home and states that she and her spouse support each other as she prepares clothes and meals, cleans the home, and does other little things.

In his affidavit the applicant's spouse states that he would suffer if he and the applicant are unable to stay together. He asserts that the applicant supported him through his studies and pushed him forward when he wanted to quit, and that as a health care worker he will need the applicant to care for their children when he is called away at any time of the night.

Statements by the applicant and her spouse provide little detail and no supporting evidence of the emotional hardship they assert the applicant's spouse would experience due to separation from the applicant, and how such emotional hardships are outside the ordinary consequences of removal. We

acknowledge the contentions that the applicant's spouse will experience emotional hardship were he to remain in the United States while his wife relocates abroad, but the record does not establish the severity of this hardship or the effects on his daily life. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nor has it been established that the applicant's spouse would be unable to travel to Costa Rica to visit the applicant.

We recognize that the applicant's U.S. citizen spouse will endure some emotional hardship as a result of long-term separation from the applicant. However, his situation if he 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.

The applicant asserts that her spouse will experience financial hardship if she is removed from the United States. She states that her spouse has an average income and cannot keep up with rent, student loans, personal loans, insurance and monthly bills. The applicant's spouse states that in the brief time they were apart he struggled to keep the household going. He maintains that with rent and school loans plus bills and car payments it is nearly impossible that he will not go to collections and that he has been selling items to get money for bills and food, but that together he and the applicant share expenses.

Financial documentation submitted to the record include pay statements for the applicant from 2014, income tax returns from 2013, Form W2s for the spouse from 2008 through 2013, bank statements from 2014, and a current apartment lease. The applicant also submitted a list of estimated monthly expenses. However, although the applicant submitted a lease agreement and bank statements, no documentation has been submitted to establish the spouse's other expenses to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. Documentation submitted to the record reflects that the applicant's spouse had a significant increase in income in 2013 over previous years, and aside from two pay statements from November 2014, there is no evidence of the applicant's financial contribution to the household. There is insufficient evidence to establish that the applicant's spouse would be unable to meet his financial obligations or that he would experience a financial hardship which rises above what is common if the applicant is unable to reside in the United States.

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. The difficulties that the applicant's spouse would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Costa Rica. The applicant states that her spouse could not join her in Costa Rica because he was born in the United States, has never been to Costa Rica, does not speak Spanish, has no chance of getting work, and has no visa to remain there. The spouse states that he was born and raised in the United States, has never been outside of the country, has his entire family here, and as a health care worker is not qualified for a job in Costa Rica.

No country information or other documentation has been submitted to the record to support that the applicant's spouse would be unable to reside in Costa Rica, and there is no evidence to support that he will not be able to obtain employment or that he does not have transferable skills he could deploy in Costa Rica. The spouse states that his entire family is in the United States, but no supporting documentation has been provided to establish that separation from his family would cause the applicant's spouse extreme hardship or to establish that he would be unable to return to the United States to visit his family.

We find that the record contains insufficient detail and no country information or other documentation to support the assertion that the applicant's spouse would experience extreme hardship if he were to relocate to Costa Rica to reside with the applicant due to her inadmissibility.

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 he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although we are not insensitive to the spouse's situation, the record does not establish that the hardship he 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, it is not necessary at this time for this office to determine 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 will be dismissed.