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U.S. Citizenship
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IN RE:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Argentina 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 committed crimes involving moral turpitude. The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) filed by [REDACTED]. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his parents and siblings.

The record reflects that the applicant was admitted to the United States in student status in 1993. The Form I-140 was approved on March 21, 2002. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on November 19, 2003. The applicant filed an Application for Waiver of Grounds of Excludability (Form I-601) on January 30, 2006.

The Acting District Director found the applicant inadmissible for having committed crimes involving moral turpitude. *Decision of Acting District Director*, dated May 24, 2006. The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Id.*

On appeal, counsel contends that the totality of the circumstances demonstrates that the applicant's parents would suffer extreme hardship if the applicant is removed to Argentina, a country in which he has not lived since the age of nine. *Form I-290B, part 3*. Counsel asserts that the decision relied primarily on financial hardship rather than on the totality of the circumstances. *Id.*

Counsel indicated on the Form I-290B that she needed 90 days to submit additional evidence to the AAO. On September 25, 2008, the AAO sent a notice by fax to counsel stating that no such documentation had been received, and requesting that a copy of any additional brief or evidence along with evidence of the date it was originally filed be submitted within five business days. To date, no response to this notice has been received. Therefore, the record is considered complete. The record contains, among other documents, affidavits from the applicant, his mother, and his father; copies of the applicant's school, criminal, and business records; and articles regarding economic conditions in Argentina. 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 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 . . . 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 with the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of 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).

Section 101(a)(48) provides in pertinent part:

(A) The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by the court or, if adjudication of guilt has been withheld, where—

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

[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 BIA and U.S. courts have found that it is the “inherent nature of the crime as defined by statute and interpreted by the courts and as limited and described by the record of conviction” and not the facts and circumstances of the particular person’s case that determines whether the offense involves moral turpitude. *See, e.g., Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *Omagah v. Ashcroft*, 288 F.3d 254, 260 (5th Cir. 2002); *Goldeshtein v. INS*, 8 F.3d 645 (9th Cir. 1993). Neither the seriousness of the criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Theft offenses are crimes involving moral turpitude. *See Matter of Chen*, 10 I&N Dec. 671 (BIA 1964); *see also Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966).

The record shows that the applicant has numerous arrests, and has been convicted of at least two crimes involving moral turpitude. The applicant was arrested on July 14, 2001 and found guilty on August 15, 2001 in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida for Retail Theft in violation of section 812.015 of the Florida Statutes. The court withheld adjudication of “delinquency” and required the applicant to complete an anti-theft counseling program and perform community service. The applicant was again arrested on December 5, 2001 and pled guilty on or about January 4, 2002 in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida of Grand Theft of a Vehicle in the third degree in violation of section 812.014 of the Florida Statutes. Adjudication of guilt was withheld, but the applicant was fined and placed on probation for a period of 18 months.

The record reflects that these offenses constitute convictions under section 101(48)(A) of the Act. Because the applicant has more than one conviction for a crime involving moral turpitude, the exceptions found at section 212(a)(2)(A)(ii) do not apply. Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act for having committed crimes involving moral turpitude. The applicant has not disputed his inadmissibility on appeal.

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

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 notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes extreme hardship on a qualifying family member. In this case, the applicant’s parents were not lawful permanent residents at the time the

applicant filed his waiver application on or about January 30, 2006. The applicant listed his parents as “Pending LPR” on his Form I-601. The record contains a Memorandum of Creation of Record of Lawful Permanent Residence showing that the applicant’s father was granted permanent resident status on February 4, 2006.

The regulation at 8 C.F.R. § 103.2(b)(12) provides that “[a]n application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed.” As the applicant’s parents were not lawful permanent residents or U.S. citizens at the time the Form I-601 was filed, they were not qualifying relatives under section 212(h)(B) of the Act. Accordingly, the application must be denied.

Nevertheless, even assuming the applicant’s parents are qualifying relatives, the AAO finds that the applicant has not demonstrated that the bar to his admission would result in extreme hardship to them. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals 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.) Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*,

927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In his affidavit, the applicant’s father states that they have “very little family which would be able to support” the applicant in Argentina. He indicates that the applicant lives with him and his wife and is studying radiological technology. He states that he would suffer hardship from being separated from the applicant because of the “extreme difficulty” his son would experience in Argentina, where he has not lived since the age of nine and where he would have no employment prospects. The applicant’s mother makes the same assertions in her affidavit.

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 parents face extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s parents would suffer emotionally as a result of separation from the applicant if they choose to remain in the United States. However, it has not been demonstrated that this hardship, when combined with other hardship factors, rises to the level of extreme hardship. The evidence submitted by the applicant does not demonstrate that he would have no employment prospects in his field of study in Argentina. Likewise, there is no evidence that the applicant’s parents could not continue to support him in Argentina. As stated above, hardship to the applicant is only relevant to the extent it results in hardship to a qualifying relative. The AAO acknowledges the hardship inherent in separating family members. However, viewed cumulatively, the hardship demonstrated by the evidence in the record, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. 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). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

It is also noted that the applicant has not submitted evidence to demonstrate that his parents would suffer extreme hardship if they relocated to Argentina.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's parents, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Furthermore, as stated above, the applicant has not demonstrated that his parents were qualifying relatives at the time he filed his waiver application. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility 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), the burden of establishing that the application merits approval 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.