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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: NOV 30 2007

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [redacted] 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having committed a crime involving moral turpitude. The applicant has two U.S. citizen sons and he is married to [redacted] who is a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated January 13, 2003.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(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.

"[M]oral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Padilla v. Gonzales*, 397 F.3d 1016, 1019-21 (7th Cir. 2005), (quoting *In re Ajami*, 22 I. & N. Dec. 949, 950 (BIA 1999)).

The record reflects that under Illinois law in 1995 the applicant was convicted of receiving/possessing/selling stolen property, 625 ILCS 5/4-103(a)(1), and was sentenced to one year of probation. In 1997 he was convicted of possession of theft/unauthorized control/over $300.00 but under $10,000, 720 ILCS 5/16-1(a)(1), and was sentenced to 24 months probation and fined. *Decision on Application for Adjustment for Permanent Residence, dated January 13, 2003; Certified Statement of Conviction/Disposition.*

In determining whether the applicant's conviction for receiving/possessing/selling stolen property under 625 ILCS 5/4-103(a)(1) constitutes a crime involving moral turpitude, the AAO turns to *Matter of Salvail*, 17 I&N Dec. 19 (BIA 1979). In that case, the respondent had in his possession goods valued at $450 and $170, and the respondent knew that the goods "had been obtained by means of theft." The Board of Immigration Appeals (BIA) stated that where the record of conviction amply shows that the necessary elements of possession and knowledge of the stolen nature of the goods were alleged and found to have been proven, thus, the convictions were for crimes involving moral turpitude. *Id.* at 20-21.

With the instant case, the convicting statute forbids, in part, a "person not entitled to the possession of a vehicle to receive, possess, conceal, sell, dispose, or transfer it, knowing it to have been stolen or converted...." 625 ILCS 5/4-103(a)(1). The record does not contain the record of conviction. However, given that the elements of the statute require possession and knowledge of the stolen nature of the vehicle, the AAO finds that the applicant was convicted of a crime involving moral turpitude under the categorical approach. Determining whether a conviction is a crime involving moral turpitude under the categorical approach entails

analyzing the elements of the crime of the statute itself. *Smalley v. Ashcroft*, 354 F.3d 332, 336 (5th Cir. 2003) (quoting *Okoro v. INS*, 125 F.3d 920 (5th Cir. 1997).

With regard to the conviction under 720 ILCS 5/16-1(a)(1), the Illinois statute states that a person commits theft when he knowingly obtains or exerts unauthorized control over property of the owner. In *Hashish v. Gonzales*, 442 F.3d 572, 576-77 (7th Cir. 2006), the court found that misdemeanor theft under 720 ILCS 5/16-1(a) involved knowingly obtaining or exerting unauthorized control over property of the owner and is a crime involving moral turpitude under the categorical approach.

Based on the aforesaid decisions, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having two convictions of crimes involving moral turpitude.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

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) . . . of subsection (a)(2) . . . if -
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> . . .
>
> (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 waiver application indicates that [redacted] qualifying relatives are his wife and sons. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure,

and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains income tax records, wage statements, W-2 Forms, letters, a marriage certificate, birth certificates, employment verification letters, recognition certificates, criminal records, and other documents.

In the Notice of Appeal to the Administrative Appeals Unit, Form I-290B, the applicant indicates that he is reformed, that he loves his children and is a good father, and that he is a good U.S. resident.

In the January 28, 2000 letter, the applicant states that he is seeking a pardon for his past conduct. He states that he has two children and a wife and takes things more seriously now than when he was young. He states that he owns a home and has a good job and stays away from trouble. He states that his sons are doing well in school, especially his older son.

The record establishes that the applicant's wife and sons would experience extreme hardship if they remained in the United States without him.

The applicant states that his absence would hinder the financial progress of his family. *Notice of Appeal to the Administrative Appeals Unit, Form I-290B.* His wife indicates that the family has always managed to live on the money her husband earns. *Letter from* [redacted] *dated February 2, 2003.* The Form W-2 in the record reflects that the applicant's wife earned $14,403 in 1999. The submitted income tax records for the years 1999 and 2000 indicate that the applicant earned $44,468 in 1999 and $50,528 in 2000. Based on the submitted documentation, the AAO finds that [redacted] and her sons, who are 16 and 13 years old, are financially dependent upon the applicant and would experience hardship if they were to remain in the United States without him.

The record is insufficient to establish that [redacted] and her sons would experience extreme hardship if they joined her husband in Mexico.

The applicant makes no hardship claim in the event that his family joined him in Mexico.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The applicant established extreme hardship to his family in the event they remained in the United States without him. However, in the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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(a)(9)(B)(v) 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.