U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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Date: MAY 24 2011 Office: WASHINGTON, D.C. FILE: [redacted]

IN RE: [redacted]

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:

[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 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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Bolivia 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 seeks a waiver of inadmissibility pursuant to 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 wife and daughter and his lawful permanent resident mother.

In a decision, dated February 6, 2008, the field office director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated February 19, 2008, the applicant states that he entered the United States illegally at the age of nine years old, that his mother struggled financially when he was growing up and he became involved with the wrong crowd, which led to his criminal record. He states that his spouse will go crazy in the United States without him as he is her only means of emotional and financial support.

Section 212(a)(2) of the Act states 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.
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> > (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 the recently decided *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. 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).

The record indicates that on March 1, 2001 the applicant was convicted of Grand Larceny Auto under Va. Code Ann. § 18.2-95 and was sentenced to six months imprisonment. On July 16, 2001, the applicant was convicted of Larceny under Va. Code Ann. § 18.2-95 and sentenced to twelve months imprisonment. On April 18, 2002, the applicant was convicted of Statutory Burglary and was sentenced to eleven months imprisonment. On the same day he was also convicted of Unauthorized Use of a Motor Vehicle under Va. Code Ann. § 18.2-102 and Driving While Intoxicated under Va. Code Ann. § 18.2-266. For these two offenses he was sentenced to eleven months and twenty day imprisonment to run concurrently with his sentencing for Statutory Burglary. On September 28, 2004, the applicant was again convicted of Unauthorized

Use of a Motor Vehicle and was sentenced to five years imprisonment. The applicant, who was born on April 20, 1981, was nineteen years old at the time of his first conviction.

The AAO notes that in the applicant's case, if he is found to be inadmissible for one crime involving moral turpitude that does not meet an exception under section 212(a)(2)(A)(ii) of the Act or two crimes involving moral turpitude, no purpose would be served in discussing whether his other convictions were for crimes involving moral turpitude.

The applicant was convicted of Larceny under Va. Code Ann. § 18.2-95 in March of 2001 and July of 2001. Va. Code Ann. § 18.2-95 provides:

> Any person who (i) commits larceny from the person of another of money or other thing of value of $5 or more, (ii) commits simple larceny not from the person of another of goods and chattels of the value of $200 or more, or (iii) commits simple larceny not from the person of another of any firearm, regardless of the firearm's value, shall be guilty of grand larceny, punishable by imprisonment in a state correctional facility for not less than one nor more than twenty years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than $2,500, either or both.

In determining whether theft is a crime of moral turpitude, the BIA considers "whether there was an intention to permanently deprive the owner of his property." *See In re Jurado-Delgado*, 24 I&N Dec. 29, 33 (BIA 2006). In *Saunders v. Com.*, 447 S.E.2d 526, 18 Va.App. 825 (1994), the Court of Appeals of Virginia stated that the intent required to commit larceny is taking of property with mental design of permanently depriving owner of possession of goods. Accordingly, the AAO finds that the offense of which the applicant was convicted under Va. Code Ann. § 18.2-95 involves moral turpitude. Thus, because the AAO has determined that the applicant was convicted of two crimes involving moral turpitude rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, we decline to review whether his other criminal convictions were for crimes involving moral turpitude.

A waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. 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 qualifying relatives in the applicant's case are his U.S. citizen spouse, U.S. citizen daughter, and lawful permanent resident mother. 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).

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 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).

The AAO notes that the record of hardship includes the Form I-290B submitted on appeal and U.S. Individual Tax Returns for the applicant and his spouse.

On his Form I-290B the applicant states he entered the United States illegally at the age of nine years old, that his mother struggled financially when he was growing up and he became involved with the wrong crowd, which led to his criminal record. He states that his spouse will go crazy in the United States without him as he is her only means of emotional and financial support. The applicant states that his wife and daughter would have to live in government subsidized housing if he were removed from the United States and that his daughter would also suffer emotionally and financially as a result of his removal. The applicant states further that although he has visited Bolivia and Brazil, where his father is from, he feels that the United States is his home, as he has grown up in this country since he was nine years old.

The AAO finds that based upon the current record, the applicant has failed to establish extreme hardship to a qualifying family member for the purposes of relief under sections 212(h) of the Act. 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)). The applicant provides few additional details of or submit evidence corroborating his hardship claims. The AAO acknowledges that the applicant has spent most of his life in the United States, but we do not find that this fact in isolation establishes that it would be an extreme hardship for him and his family to relocate to Bolivia. The AAO acknowledges that the 2005 U.S. Individual Income Tax Return submitted as part of the record indicates that the applicant and his wife earned $6,743 during that tax year, but the record does not give a complete picture of what the family's finances entail. The AAO is not able to make a determination as to what financial hardship the applicant's family will experience as a result of his inadmissibility. In addition, the AAO notes that the record does not include any information as to what hardship the applicant's mother may face as a result of his inadmissibility. Therefore, based on the current

record, the AAO finds that the applicant has not established that a qualifying relative will suffer extreme hardship as a result of his inadmissibility.

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.