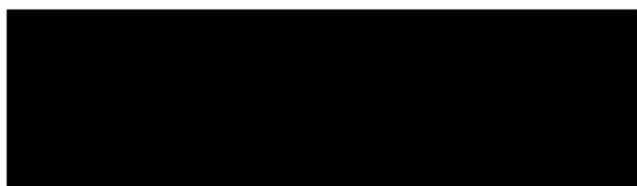


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



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Date: **OCT 05 2011**

Office: PHILADELPHIA

FILE:

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:

SELF-REPRESENTED

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,

for Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Dominican Republic 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. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Field Office Director*, dated February 18, 2009.

On appeal, the applicant asserts that his family will suffer extreme hardship should the present waiver application be denied. *Statement from the Applicant on Form I-290B*, dated March 13, 2009.

The record contains, but is not limited to: statements from the applicant, as well as the applicant's wife, father, and children; a letter from a school counselor for one of the applicant's children; a letter from a family development specialist; academic records for two of the applicant's children; information on conditions in the Dominican Republic; copies of birth records for the applicant's family members; tax records for the applicant's wife; and documentation in connection with the applicant's criminal convictions. 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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(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.)

The record shows that the applicant pled guilty to two offenses for his conduct on November 4, 2006: False Identification to Law Enforcement Authorities under 18 Pa. C. S. § 4914; and Tampering with Public Records or Information under 18 Pa. C. S. § 4911(a)(2).

At the time of the applicant's convictions, 18 Pa. C. S. § 4914 stated:

False identification to law enforcement authorities.

(a) Offense defined.--A person commits an offense if he furnishes law enforcement authorities with false information about his identity after being informed by a law enforcement officer who is in uniform or who has identified himself as a law enforcement officer that the person is the subject of an official investigation of a violation of law.

(b) Grading.--An offense under this section is a misdemeanor of the third degree.

At the time of the applicant's convictions, 18 Pa. C. S. § 4911 stated:

Tampering with public records or information.

(a) Offense defined.--A person commits an offense if he:

- (1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;
- (2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection; or
- (3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(b) Grading.--An offense under this section is a misdemeanor of the second degree unless the intent of the actor is to defraud or injure anyone, in which case the offense is a felony of the third degree.

The present case falls within the jurisdiction of the Third Circuit. To determine whether a crime constitutes a crime involving moral turpitude, we engage in a categorical inquiry that consists of looking “to the elements of the statutory offense . . . to ascertain that least culpable conduct hypothetically necessary to sustain a conviction under the statute.” *Jean-Louis v. Holder*, 582 F.3d 462, 465-66, 2009 WL 3172753 (3<sup>rd</sup> Cir. October 6, 2009). The “inquiry concludes when we determine whether the least culpable conduct sufficient to sustain conviction under the statute “fits” within the requirements of a CIMT.” *Id.* at 470.

However, if the “statute of conviction contains disjunctive elements, some of which are sufficient for conviction of [a CIMT] and other of which are not . . . [an adjudicator] examin[es] the record of conviction for the narrow purpose of determining the specific subpart under which the defendant was convicted.” *Id.* at 466. This is true “even where clear sectional divisions do not delineate the statutory variations.” *Id.* In so doing, an adjudicator may only look at the formal record of conviction. *Id.*

The AAO is also not aware of any published Federal court or administrative decisions addressing whether an offense under 18 Pa. C. S. § 4911(a)(2) constitutes a crime involving moral turpitude. In determining which clause of 18 Pa. C. S. § 4911(a)(2) under which the applicant was convicted, the AAO observes that the Criminal Complaint, which is part of the record of conviction, states that the applicant “produced a Resident Alien card which [a police officer] recognized as not being legitimate.” *Criminal Complaint*, dated November 6, 2006. The “Information” further states that the applicant “did have in his possession [a] counterfeit Resident Alien card, social security card, two passport type pictures and a [Pennsylvania] identification card all with the name [REDACTED] *Information*, dated

November 4, 2006. Thus, the applicant was convicted under the clause of 18 Pa. C. S. § 4911(a)(2) that addresses “present[ing]” a record or document, not making such record or document.

In *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), the BIA held that “possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude.” However, 18 Pa. C. S. § 4911(a)(2) requires that an offender present a record or document with an “intent that it be taken as a genuine part of information or records.” Thus, the section reaches more than mere possession of false records or documents. The AAO finds that because 18 Pa. C. S. § 4911(a)(2) requires the specific intent to use a document for a false purpose, whether or not the ultimate motive was to receive a benefit, public service, or to obtain employment, a conviction under this statute “is accompanied by a vicious motive or corrupt mind” and is thus a crime involving moral turpitude. See, e.g., *Omagah v. Ashcroft*, 288 F.3d 254, 262 (5<sup>th</sup> Cir. 2002) (finding that crimes that do not involve fraud, but that include “dishonesty or lying as an essential element” also tend to involve moral turpitude); see also *Itani v. Ashcroft*, 298 F.3d 1213, 1216 (11<sup>th</sup> Cir. 2002) (“Generally a crime involving dishonesty or false statement is considered to be one involving moral turpitude.”).

As correctly noted by the field office director, the applicant’s conviction under 18 Pa. C. S. § 4914(a) does not meet the “petty offense” exception found in section 212(a)(2)(A)(ii) of the Act, as the offense is punishable by up to two years of incarceration. 18 Pa. C. S. § 106(b)(7). Thus, the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude solely due to his conviction under 18 Pa. C. S. § 4914(a), and he requires a waiver under section 212(h) of the Act.

The field office director analyzed the applicant’s conviction under 18 Pa. C. S. § 4914 and found that it does not constitute a crime involving moral turpitude. The field office director relied on the reasoning of the Ninth Circuit in *Blanco v. Mukasey*, 518 F.3d 714, 719 (9<sup>th</sup> Cir. 2008), which stated “intent to defraud is implicit in the nature of the crime when the individual makes false statements in order to procure something of value, either monetary or non-monetary,” yet “[w]hen the only ‘benefit’ the individual obtains is to impede the enforcement of the law, the crime does not involve moral turpitude.” It is unclear why the field office director did not apply the rationale in *Blanco* to both of the applicant’s convictions. However, the reasoning in *Blanco* has not been adopted by the Third Circuit or the BIA, and it is inconsistent with BIA case law and the case law of other circuits, as discussed above. Accordingly, the AAO declines to follow *Blanco* and other similar Ninth Circuit precedents outside the Ninth Circuit. Regardless, as noted above, as the applicant’s conviction under 18 Pa. C. S. § 4914(a) renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, it is not necessary to further assess whether his conviction under 18 Pa. C. S. § 4914 also constitutes a crime involving moral turpitude.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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 . . .; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife and children are the qualifying relatives in this case. 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-Morales*, 21 I&N Dec. 296, 301 (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).

On appeal, the applicant states that he is submitting additional evidence to show that denial of his waiver application will have extreme consequences for his family members. He provides that he would like to include information on therapy his wife is receiving, but that her doctor will only release information directly to United States Citizenship and Immigration Services (USCIS) upon request.

In a statement dated March 3, 2009, the applicant asserted that there is discrimination in the Dominican Republic, particularly if you are married to a U.S. citizen. He stated that he cannot provide for his family there, and that educational opportunities are limited to those with wealth. He provided that he does not wish for his children to live without him, yet he wants them to receive the opportunities of residing in the United States.

The applicant's wife states that she has emotional distress due to possible separation from the applicant, and that she is receiving therapy. She adds that she was born in Puerto Rico and that she has no knowledge of the Dominican Republic. She indicates that she hears that the Dominican Republic is a bad place to live, with poor schools, low respect for personal property, high crime, and poor medical care. She adds that she wishes for her children to have the better education and future that they can obtain in the United States. She states that it would be difficult for her to raise her children in the United States without the applicant, and that they need their father's presence.

In a letter dated March 9, 2009, the applicant's father stated that conditions are poor in the Dominican Republic where he resides, and that the applicant's children will have a better experience in the United States.

The applicant provided a letter from [REDACTED], a counselor for one of his children, who attested that his students who have experienced absent fathers have suffered emotional difficulty and required support emotionally and behaviorally. [REDACTED] previously stated that the applicant's son, [REDACTED] had significant behavioral and emotional problems during kindergarten including outbursts of anger, yet he made steady improvement over the following two years. [REDACTED] reported that the applicant's son, [REDACTED] has a history of difficult peer relationships, but that he improved over the previous two years.

The applicant provided a letter from a family development specialist, [REDACTED] who attested that the applicant's family members depend on him and he is their sole provider. [REDACTED] noted that the applicant has become a positive role model for his two biological children and his two children through marriage. She posited that the applicant would be unable to support his family emotionally or financially from the Dominican Republic, and that it would be in the interests of the family to remain together.

Upon review, the applicant has not established that a qualifying relative will suffer extreme hardship should the present waiver application be denied. It is first noted that much of the hardship identified has been discussed as general challenges experienced by all of the applicant's children and his wife, without regard to their individual experiences. For example, the applicant has expressed concern for his family's economic circumstances should they reside in the Dominican Republic, yet he has not provided adequate explanation to show that they will face unmet financial need there. The general assertions about the lack of educational opportunities are not supported by reports on conditions in the Dominican Republic. While the record shows that two of the applicant's children have experienced emotional challenges in the past, a letter from [REDACTED] supports that they have made progress, and the applicant has not shown that they would lack appropriate academic opportunities in the Dominican Republic. While the Dominican Republic has medical services that are less available or efficient than those in the United States, the applicant has not shown that his family members have health needs that cannot be addressed there.

The AAO has examined the report on conditions in the Dominican Republic provided by the applicant. While incidents have been reported that relate to the concerns the applicant has for his family members, including crime, they do not reflect that all individuals residing in the Dominican Republic face a level of poverty, lack of education, or risk of crime that rises to an extreme level.

The AAO acknowledges the applicant's concern for his family members, but he has not established that they will personally be targeted for harms in the Dominican Republic, or that they will endure conditions that constitute extreme hardship.

The AAO acknowledges that acting a single parent for four children involves substantial difficulty, and that the applicant's wife would face challenges in the applicant's absence due to the additional parenting responsibilities. Yet, the applicant has not clearly described his wife's current parenting experience, such as whether she receives assistance with childcare or whether the biological father of two of her children shares responsibility or contributes economically. The record shows that the applicant's wife earned over \$10,000 in 2006, thus it is evident that she has worked in the past, including at a time when she was a parent with young children. The applicant has not shown that she would be unable to continue. Without sufficient explanation from the applicant, the AAO is unable to draw unsupported conclusions regarding his family's challenges. In proceedings regarding a waiver of grounds of inadmissibility under section 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.

contends that the applicant is the sole income provider for their family, yet the applicant has not submitted documentation of his employment or income. The only evidence in the record of income earned by the applicant's family consists of records of his wife's income. The applicant referenced therapy that his wife receives, yet he noted that he is unable to submit documentation. The applicant must provide evidence in support of his assertions, particularly when documentary evidence should be available and no reasonable explanation has been provided to explain why it is not. 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)). Without documentation, the AAO is unable to give weight to the applicant's assertions regarding his income and his wife's mental health services.

The applicant and his family members express that they will suffer emotional hardship if they are separated. The AAO acknowledges that the separation of family members often results in significant emotional difficulty. Yet, the general, brief descriptions submitted by the applicant do not distinguish his wife's or children's psychological challenges from those often expected when family members reside apart due to inadmissibility. The AAO examined the letter from yet the record does not establish her relationship to the applicant's family or the basis for her knowledge of their circumstances.

All stated elements of hardship have been considered in aggregate. Based on the foregoing, the applicant has not shown that denial of his waiver application under section 212(h) of the Act "would result in extreme hardship" to his wife or children. Accordingly, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) and 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.