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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services



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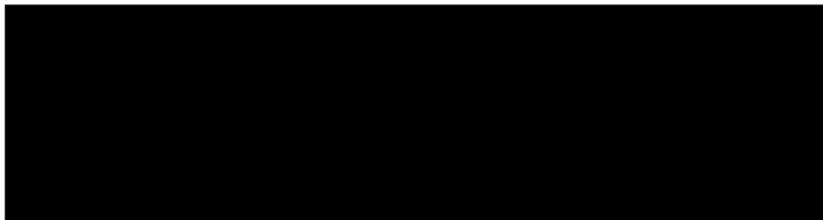
Applicant:



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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Jamaica 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 a crime 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 remain in the United States with her U.S. citizen spouse, child, and mother.

The Acting District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Acting District Director*, dated June 3, 2010.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) failed to adequately consider and evaluate each hardship factor individually and cumulatively in terms of their effects on the applicant's three qualifying relatives. *See Form I-290B, Notice of Appeal or Motion*, received June 23, 2010.

Counsel additionally asserts that the Acting District Director misapplied relevant precedent and addresses factual distinctions between the cited cases and the applicant's case. The AAO finds, however, that the cases cited by the Acting District Director were not relied upon for their factual relevance or holdings, but for the guidance they provide in defining extreme hardship, the standard that governs this proceeding. The Acting District Director's reliance on the cited case law was, therefore, reasonable and appropriate. *In Re Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001); *Re Cervantes-Gonzalez*, 22 I & N Dec. 560, 565 (BIA 1999).

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; various immigration applications and petitions; hardship letters; medical and psychological records; financial, tax and employment records; familial records; and the applicant's criminal record. The entire record was reviewed and considered in rendering this decision on the appeal.

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.)

In *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 where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, 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).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record shows that the applicant was arrested on January 14, 2002 in Prince George’s County, Maryland and charged with “Theft: \$500 Plus Value,” a felony (Case [REDACTED]). The applicant, who was born on July 29, 1980, was 21 years old at the time she committed the crime that resulted in her arrest. On February 28, 2002 all charges were disposed at trial with no plea. The applicant furnished an Order for Expungement of Police and Court Records from the District Court of Maryland for Prince George’s County ordering the expungement of police records pertaining to the arrest, detention, or confinement of the applicant on or about January 14, 2002.

The record shows that the applicant was arrested on July 24, 2008 by the Millersville, Maryland Police Department and charged with “Theft: Less \$500 Value,” in violation of section 7-104 of the Maryland Criminal Code (Md. Crim. Code § 7-104), a misdemeanor subject to imprisonment not exceeding 18 months or a fine not exceeding \$500, or both, and payment of restitution and fines (Case [REDACTED]). On August 11, 2010 the case was stayed indefinitely, with the understanding that the case could be brought to the active docket after one year for good cause shown. The applicant does not address on appeal whether the case was brought again after one year and the record contains no final disposition concerning the matter.

The record shows that on April 21, 2009 the applicant was arrested a third time and charged in Anne Arundel County, Maryland with “Theft: Less \$500 Value,” in violation of section 7-104 of the Maryland Criminal Code (Md. Crim. Code § 7-104). (Case [REDACTED]). On July 1, 2009 the applicant pled guilty and was convicted under Maryland Criminal Code § 7-104(g)(2)(i)(ii) for Theft: Less Than \$500 Value, and was sentenced to one year unsupervised probation and fined \$500 (\$457.50 suspended), plus costs.

Md. Crim. Code Ann. § 7-104(g)(2)(i)(ii) provides, in part:

(g) (2) Except as provided in paragraphs (3) and (4) of this subsection, a person convicted of theft of property or services with a value of less than \$500, is guilty of a misdemeanor and:

(i) is subject to imprisonment not exceeding 18 months or a fine not exceeding \$500 or both; and

(ii) shall restore the property taken to the owner or pay the owner the value of the property or services.

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. *See Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974)(stating, “It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . .”); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966)(stating, “Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude].”) A conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973).

Upon review of Maryland court decisions, the AAO finds that a conviction for theft under the Maryland Criminal Code requires the specific intent to deprive the victim of his or her property permanently. In *Price v. State*, the Maryland Court of Special Appeals discussed the distinctions between a conviction for theft and a conviction for carjacking. 681 A.2d 1206 (1996). The Court stated that a theft conviction “requires proof of circumstances that would indicate the offender’s intent permanently to deprive the owner of his or her property whether by way of appropriating it to one’s own use or concealment or abandonment in such a manner as to deprive the owner of the property” while carjacking “does not require that there be any asportation or removal of the vehicle for criminal responsibility to attach.” 681 A.2d at 1214. In *Gamble v. State*, the Maryland Court of Special Appeals discussed whether the offender’s conduct constituted a “trespassory taking.” 552 A.2d 928 (1989). The Court stated that the primary elements of the theft statute are “willfully and knowingly obtaining unauthorized control over the property or services of another, by deception or otherwise, with the intent to deprive the owner of his property by using, concealing, or abandoning it in such a manner that it probably will not be returned to the owner.” 552 A.2d at 931. The Court concluded that the offender committed theft because the evidence indicated that he “took the money with the intent permanently to deprive the rightful owner of it.” *Id.* Therefore, the AAO finds that a conviction for theft under Md. Crim. Code § 7-104 is categorically a crime involving moral turpitude because it requires the intent to permanently deprive the victim of his or her property. The applicant is found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a consequence of her conviction for theft. The record supports this finding and the applicant does not contest inadmissibility. As the statute shows on its face that the maximum penalty possible exceeds one year in prison, the petty offense exception does not apply.

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

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 an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's U.S. citizen spouse, mother, and child. Hardship to the applicant herself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 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*, 138 F.3d at 1293 (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.

The record reflects that the applicant’s spouse is a 27-year-old native of Jamaica and citizen of the United States who has been married to the applicant since September 2007. He writes that he cannot live without his wife and would be mentally and spiritually damaged without her and his 10-year-old stepson, [REDACTED], whom they are raising together. The applicant’s spouse states that his wife holds them all together and ensures that the household duties are met. He explains that he works long hours and her presence as a stay-at-home mother is deeply needed. The applicant’s spouse indicates that [REDACTED] is currently on medication for ADHD and has a speech impediment which is improving through speech therapy. Corroborating evidence is contained in the record. He adds that he and the applicant would like to have a child of their own but he has a low sperm count and they may need to consider artificial insemination. [REDACTED], contends after a single interview with the applicant’s spouse that the latter is experiencing role-identity distress, not feeling “like a man,” on account of his infertility. [REDACTED] asserts that removal of the applicant would result in an impact on her spouse, mother and son that “clearly meets the standards of ‘extreme and unusual’.” No explanation or foundation is provided for this assertion. While the AAO recognizes that the applicant’s spouse would likely experience some separation-related difficulties in the applicant’s absence, the evidence is insufficient to establish challenges beyond those ordinarily associated with the inadmissibility or removal of a loved one.

The record reflects that the applicant’s mother is a 48-year-old native of Jamaica and citizen of the United States. She indicates that her husband left her several years ago and that her household includes herself, her now 19-year-old son (the applicant’s youngest brother), the applicant and her son [REDACTED] the applicant’s spouse, and unnamed nephews. The applicant’s mother writes that they are a small family which would crumble without the applicant who is the glue that holds them

together. She states that she cannot sleep at night thinking about the applicant's possible removal and what that would do to the family. The applicant's mother maintains that the applicant does the cooking, cleaning and "keeps the kids off the streets." She states that she works as an LPN, sometimes more than 40 hours per week, and attends school on Tuesday evenings to earn her RN license. The applicant's mother asserts that without her daughter's help keeping Oneil focused and off the street, she will have to quit school. The record contains neither documentary evidence related to the applicant's mother's school program nor explanations or evidence concerning the applicant's role in keeping her adult brother out of trouble. Following a single interview with the applicant's mother, [REDACTED] writes that she has a "likely diagnosis of Adjustment Disorder." While the AAO recognizes that the applicant's mother would likely experience some separation-related difficulties in the applicant's absence, the evidence is insufficient to establish challenges beyond those ordinarily associated with the inadmissibility or removal of a loved one.

The record reflects that the applicant's son, [REDACTED] is a 10-year-old native and citizen of the United States. [REDACTED] writes that [REDACTED] is a patient in her pediatric practice "who has been diagnosed with ADHD. He comes to the office periodically for medication refills and ADHD rechecks to assess his status." Copies of prescription drug labels for Adderall, Dextroamp-Amphet, and Clonidine have been submitted. Notes of various dates from [REDACTED] teachers indicate that he is "struggling in the area of reading" and has a "very difficult time staying on task, listening for directions, and completing his work independently." [REDACTED] M.S., CCC-SLP writes in December 2009 that [REDACTED] is receiving special education services as a student with a Speech and Language Impairment, has a history of stuttering/dysfluency, but that his fluency of speech has improved significantly in the past year. No separation-related assertions have been made concerning hardship to the applicant's son in the event that the applicant is removed and he does not accompany her. Accordingly, the AAO will not speculate in this regard.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse, son and mother. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relatives, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that going back to Jamaica will cripple his family because they came to the United States for a better life and an endless line of opportunities. He does not address or define the opportunities he believes would be unavailable to his family in Jamaica. The applicant's spouse writes that his stepson, [REDACTED] would not receive the care he needs in Jamaica for his ADHD and speech impediment. The applicant's mother writes that she fears [REDACTED] might not get the help he needs in Jamaica. [REDACTED] asserts that to relocate [REDACTED] to Jamaica would be to "deprive him of the psychoeducational and psychiatric help that is making a significant difference in his development." The record contains no evidence that the applicant's son would be without access to ADHD treatment or speech therapy in Jamaica. The Acting District Director specifically addressed this point on two occasions in his decision denying the waiver, stating that the applicant failed to submit evidence that her son would be unable to get the care and medications in Jamaica that he is receiving in the United States. Nevertheless, the applicant has submitted no such evidence on appeal. [REDACTED] further contends that the "the economic situation and infrastructure in Jamaica, in terms of basic services,

employment opportunities, food, health services, and schools, is far inferior to that in the US, and even physical safety is not a given.” No foundation has been offered concerning [REDACTED] expertise in this area, and the record contains no documentary evidence addressing country conditions in Jamaica.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant’s spouse, son, and mother including their adjustment to life in Jamaica; lengthy residence in the United States and family/community ties herein; the applicant’s spouse and mother’s U.S. employment; and their concerns for the availability of treatment for the applicant’s son’s ADHD and speech impediment in Jamaica. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant’s U.S. citizen spouse, son, or mother would suffer extreme hardship were any or all of them to relocate to Jamaica to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse, son and mother face are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, 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.