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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

[REDACTED]

H2

Date: **FEB 14 2012** Office: ATLANTA, GEORGIA

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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia 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 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 remain in the United States with her three U.S. citizen children and her U.S. citizen mother.

In a decision, dated March 18, 2009, the field office director found that the applicant failed to establish that her qualifying relative would suffer extreme hardship as a result of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated March 18, 2009, counsel states that the field office director did not give proper weight to the extreme hardship factors presented and failed to consider that one of the central purposes for the waiver is to provide for the unification of families.

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.

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 indicates that on October 31, 2008, in Florida, the applicant pled guilty to the offenses "Organized Scheme to Defraud" under Florida Statutes § 817.034(4)(b) and Grand Theft under Florida Statutes § 812.014(2)(b). Both offenses were classified as second degree felonies and a second degree felony is punishable by up to 15 years in prison.

The applicant's case arises within the jurisdiction of the Eleventh Circuit Court of Appeals, which has recently reaffirmed the traditional categorical approach for determining whether a crime involves moral turpitude. *See Fajardo v. Attorney General*, 659 F.3d 1301, 1310 (11th Cir. 2011) (finding that the Congress intended the traditional categorical or modified categorical approach to be used to determine whether convictions were convictions for crimes involving moral turpitude and declining to follow the "realistic probability approach" put forth by the Attorney General in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)). In its decision, the Eleventh Circuit defined the categorical approach as "'looking only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions.'" 659 F.3d at 1305 (quoting *Taylor v. United States*, 495 U.S. 575, 600 (1990)). The court indicated, however, that where the statutory definition of a crime includes "conduct that would categorically be grounds for removal as well as conduct that would not, then the record of conviction – i.e., the charging document, plea, verdict, and sentence – may also be considered." 659 F.3d at 1305 (citing *Jaggernaut v. U.S. Att'y Gen.*, 432 F.3d 1346, 1354-55 (11th Cir. 2005)).

It is well settled that any crime involving fraud is a crime involving moral turpitude. *See, e.g., Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), *cert denied*, 383 U.S. 915 (1966). The Fifth Circuit held in *Millard v. Tuttle*, 46 F.2d 342 (5th Cir. 1930), that a conviction of an offense with intention to defraud, on its face, implies moral turpitude and that it is hardly necessary to cite authority to support the proposition that the commission of a fraud involved moral turpitude. The AAO concurs that the applicant's conviction for the offense of an organized scheme to defraud is a crime involving moral turpitude.

Because we have determined that the applicant has been convicted of a crime involving moral turpitude that does not meet the petty offense exception, no purpose is served in addressing at length whether the applicant's conviction for grand theft also constitutes a crime involving moral turpitude. We note that counsel does not dispute the finding of inadmissibility by the field office director.

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

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 mother and three 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 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 of hardship includes: a statement from the applicant; a statement from the applicant's mother; letters and declarations from the applicant's siblings; a letter from the applicant's pastor; a letter from the applicant's employer; the applicant's mother's medical records; country condition information for Jamaica; information about the applicant's mother's medical conditions; financial documentation for the applicant, her mother, and her siblings.

The statements, letters, and declarations submitted by the applicant and her family indicate that the applicant's mother lives with the applicant and her children and that the applicant provides for the daily care of her mother. The statements indicate that the applicant's mother suffers from hypertension, hyperlipidemia, obesity, insulin dependent diabetes, and glaucoma. She is also blind in one eye with partial vision in the other eye. The statements reflect that the applicant's mother is in no position, physically or financially to support the applicant's three children and that the children have never lived without their mother. The letters from the applicant's siblings indicate that the applicant is the best sibling to care for their mother because she is a nurse and that none of the siblings would be able to care for the applicant's children in the absence of the applicant because they are struggling to care financially for their own families. The applicant's sister submitted tax documentation showing that she made about \$12,500 in 2008 and supported two dependents. The applicant's brother submitted tax documentation showing that he made about \$32,000 in 2008.

The statements submitted also indicate that relocating to Jamaica would be hard for the applicant's mother because of her health problems and difficult for the applicant's children because they have never been out of the country. The applicant's mother asserts her concerns over the violence in Jamaica, her health if she were to relocate to Jamaica, her ability to receive medical care in Jamaica, and where she and the applicant would live in Jamaica.

The AAO notes that medical documentation in the record supports the statements made by the applicant and her family regarding the health problems of her mother. The record also supports the assertions regarding country conditions in Jamaica, that in certain areas of Jamaica gang violence and shootings are regular occurrences, and that medical care is more limited in Jamaica.

The AAO finds that relocation to Jamaica would be an extreme hardship for the applicant's mother and children. The applicant's mother would suffer extreme hardship from having to leave the United States and her current medical treatment to live in Jamaica, a country that has limited medical care as compared to the United States. The applicant's mother's situation is made worse by the severity of her medical ailments and the severe consequences that could result from her not having the proper care, namely complete blindness in the case of glaucoma and death in the case of her insulin dependent diabetes. Furthermore, relocating to Jamaica would cause the applicant's mother to have to separate from her other three children and grandchildren.

The AAO also finds that separation would be extreme hardship for the applicant's mother. The applicant is her mother's only caregiver and her siblings are not able to provide care for her. As stated above, because of the seriousness of the applicant's mother's medical conditions, she would

suffer extreme emotional and physical hardship as a result of separation. The AAO cannot find that separation would be an extreme hardship for the applicant's children because the record fails to indicate the part the children's father plays in their upbringing. Having found that the applicant's mother would suffer extreme hardship as a result of the applicant's inadmissibility, extreme hardship to the applicant's children need not be shown.

However, the AAO does not find that the applicant merits a waiver of inadmissibility as a matter of discretion. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The BIA has stated:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's two criminal convictions. We note that the applicant's convictions are recent and for serious fraud/theft offenses that occurred over the course of three years. The favorable factors in the present case are the applicant's extensive family ties to the United States; the hardship to the applicant's U.S. citizen mother and children if she were to be denied a waiver of inadmissibility; and, as stated in letters from her family, friends, her employer, and her pastor, the applicant's value as an employee, good moral character, and her attributes as a good mother, daughter, and sister. The applicant has expressed remorse for her crimes claiming that they were the result of a "moment of desperate need." However, we note that her participation in the fraudulent scheme continued for a three-year period, involved the use of two aliases, and apparently

resulted in financial losses in excess of \$100,000. It has been less than five years since the applicant's prosecution, the applicant is still on probation, and though the applicant indicates that she is complying with restitution requirements, she has not demonstrated through independent evidence the amount of restitution she has paid. As such, we find that the record does not show genuine rehabilitation, and the gravity and recent nature of the applicant's crimes raises significant concerns as to her character and desirability as a permanent resident. Based on the record before us, we find that the adverse factors in this case outweigh the positive factors.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, we find that the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.