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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 2 2 2013 OFFICE: BALTIMORE, MARYLAND 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of 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 is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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.

The 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 District Director,* dated September 26, 2011.

On appeal, counsel contends that the district director failed to consider that the applicant has established that he has been rehabilitated in the more than 15 years since his only conviction, and that the applicant has also established extreme hardship to his U.S. citizen spouse. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received October 24, 2011.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; various immigration applications and petitions; hardship affidavits from the applicant's spouse; numerous letters of character reference and support; a letter from the applicant; a physician's letter; financial records; birth and marriage documents; and documents related to 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 –
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> > (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.)

The applicant's case arises within the jurisdiction of the Fourth Circuit Court of Appeals. In *Prudencio v. Holder*, 669 F.3d 472, 484 (4th Cir. 2012), the Fourth Circuit Court of Appeals rejected *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), deferring to the categorical and modified categorical analysis as originally articulated in *Taylor v. U.S.,* 495 U.S. 575, 600–01 (1990) and *Shepard v. U.S.*, 544 U.S. 13 (2005). Thus, to determine whether a conviction is a crime involving moral turpitude in the Fourth Circuit, an adjudicator first applies the categorical approach. *Prudencio*, 669 F.3d at 484-485. (citing *Taylor,* 495 U.S. at 600–01). This analysis requires examining only the statutory elements of the crime, without considering the facts or conduct of the particular violation at issue. 669 F.3d at 484-85 (citing *Yousefi v. U.S. I.N.S.*, 260 F.3d 318, 326 (4th Cir. 2001)). However, where a statute is divisible, encompassing crimes that qualify as crimes involving moral turpitude and crimes that do not, the adjudicator proceeds under the modified categorical approach to review the record of conviction to determine whether the crime of which the alien was convicted qualifies as a crime involving moral turpitude. 669 F.3d at 484-85 (citing *Taylor,* 495 U.S. at 602, 110). The record of conviction is composed of the charging document, the plea agreement, the plea colloquy, and any explicit findings of fact made by the trial judge. 669 F.3d at 484-85 (citing *Shepard,* 544 U.S. at 15).

The record shows that the applicant was convicted in on December 15, 1997 of car theft, for his conduct on The applicant was sentenced to two years of supervised

probation. The applicant does not contest that he has been convicted of a crime involving moral turpitude or whether he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

> (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in [her] discretion, waive the application of subparagraphs (D)…of subsection (a)(2) if—
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—
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> (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection…
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> (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
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> (iii) the alien has been rehabilitated; or
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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 established to the satisfaction of the [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…
>
> (2) the [Secretary], in [her] 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.

In the present matter, the applicant is inadmissible only under section 212(a)(2)(A)(i)(I) of the Act. The record does not reflect that admitting the applicant would be contrary to the national welfare, safety, or security of the United States. Section 212(h)(1)(A)(ii) of the Act. While the applicant's conviction for car theft is significant and cannot be condoned, the record does not show that he has ever engaged in violent behavior. The record does not show that the applicant has ever engaged in criminal or illegal activity of any kind following his conduct of which resulted in his only criminal conviction more than 17 years ago.

The record shows that the applicant has been married since November 2009 to his U.S. citizen spouse who describes herself as both emotionally and financially dependent on him. The record

indicates that the applicant has operated a commercial business for more approximately 13 years, through which he employs three individuals. Income tax returns show that the applicant has paid taxes on his income therefrom. Numerous attestations by others have been submitted concerning the applicant's good moral character and essential presence in the community. Therein the applicant is described by his longtime pastor, fellow church members and friends as loyal, honest, trustworthy, conscientious, generous, admired, respected, respectful, faithful, committed, devoted, hardworking, and a person of integrity. The applicant has shown that he meets the requirement of section 212(h)(1)(A)(ii) of the Act.

The applicant has shown by a preponderance of the evidence that he has been rehabilitated. Section 212(h)(1)(A)(iii) of the Act. As discussed above, there is no evidence that he has been convicted of a crime involving moral turpitude since December 1997 and no evidence that he has engaged in any criminal activity since more than 17 years ago. The record shows that the applicant has conducted himself well during the ensuing years, operating a commercial business since August 2000 and employing others, volunteering in his church and community, providing emotional, physical and economic support to his U.S. citizen spouse, and garnering attestations by others to his good moral character and essential presence in the community. The record does not indicate that the applicant has a propensity to engage in further criminal activity of any kind. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act. Based on the foregoing, the applicant has shown that he is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act.

In determining whether the applicant warrants a favorable exercise of discretion under section 212(h) of the Act, the Secretary must weigh positive and negative factors in the present case. The negative factors in this case are the applicant's conviction in 1997 for car theft, a crime involving moral turpitude, and his immigration violations which include remaining in the United States beyond the period authorized by his July 6, 1994 B-2 nonimmigrant visa, and his lengthy periods of unauthorized employment. The positive factors in this case include hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the needed emotional, physical and economic support the applicant provides his U.S. citizen spouse; the applicant's significant family, business, and community ties to the United States; his business ownership in the United States through which he employs others and contributes to the economy; the applicant's payment of taxes in the United States; and the lack of a further criminal record in over 16 years. While the applicant's criminal conviction and immigration violations cannot be condoned, the positive factors in this case outweigh the negative factors.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.