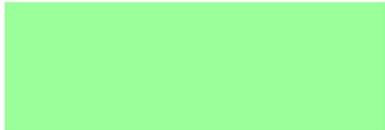




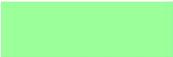
U.S. Citizenship  
and Immigration  
Services

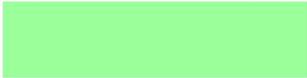
(b)(6)



DATE: DEC 18 2013

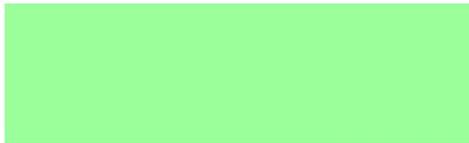
OFFICE: NEWARK

FILE: 

IN RE: 

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 Field Office Director, Newark, New Jersey denied the waiver application. A subsequent appeal and motion to reopen and reconsider were dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted, the prior AAO decision is withdrawn, and the appeal is sustained.

The applicant is a native of Nigeria and citizen of Canada who was found to be inadmissible to the United States 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 committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 18, 2009. On appeal, the AAO also determined that the applicant failed to establish extreme hardship for a qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated April 20, 2012. On motion, the AAO found that the applicant's criminal expungement did not expunge his conviction for immigration purposes and affirmed its prior decision. *See Decision of the AAO*, dated April 3, 2013.

The applicant has submitted a second motion to reopen and reconsider. In the applicant's motion to reopen, the applicant submitted additional evidence to demonstrate that his qualifying relatives would suffer extreme hardship upon denial of his waiver application.

In support of the applicant's motion to reopen, the applicant submitted a psychological report concerning his qualifying relatives and letters from his children's schools. 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.

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

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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 . . . .

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 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 (3rd 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 applicant was convicted of credit card theft on [REDACTED] in New Jersey Superior Court, [REDACTED]. The applicant was sentenced to two years of probation and a fine of one thousand dollars. The applicant’s criminal conviction for credit card theft was subsequently expunged in New Jersey Superior Court, [REDACTED] on [REDACTED]. The field office director found the applicant to be inadmissible for having been convicted of a crime involving moral turpitude. The applicant has not disputed this determination on appeal. As the applicant has not disputed inadmissibility on appeal and the record does not show the field office director’s finding of inadmissibility to be erroneous, the AAO will not disturb the inadmissibility finding.

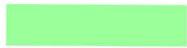
As the applicant’s conviction that renders him inadmissible took place on [REDACTED], over 15 years ago, he is eligible for consideration for a waiver pursuant to section 212(h)(1)(A) of the Act.

The record reflects that in addition to the applicant’s conviction for credit card theft in the United States, he was charged with sexual assault and forcible confinement in [REDACTED]. However, the record indicates that the applicant was acquitted of these charges in [REDACTED]. There is no indication that the applicant has any other criminal convictions or charges.

It is noted that the applicant married his current spouse on [REDACTED] and the applicant and his spouse have two children together, born on [REDACTED] and [REDACTED]. As noted, the applicant’s last criminal conviction took place on [REDACTED]. The record reflects that the applicant has not been convicted of any crime since his marriage to his current spouse and the birth of their children.

The applicant’s spouse asserts that she lives happily with the applicant in the house they purchased and he provides her with aid for her medical conditions. The record contains medical documentation indicating that the applicant’s spouse is being treated for diabetes and hypertension. The applicant’s spouse also asserts that she has two children with the applicant who are nurtured and supported by the applicant. The applicant’s spouse contends that the applicant has been involved in the recreational activities and after school programs of their children since their birth. The record contains a psychological report stating that the applicant is the primary caretaker for his two sons, who are functioning at extremely high levels academically, interpersonally, and athletically. The report further states that the applicant is an excellent father who has instilled values and work habits into his sons.

Based on the record, the AAO finds that the applicant has demonstrated rehabilitation and that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States pursuant to section 212(h)(1)(A) of the Act. For the same reasons, the AAO finds that the applicant merits a favorable exercise of discretion.



(b)(6)

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the prior AAO decision is withdrawn and the appeal will be sustained.

**ORDER:** The motion will be granted, the prior AAO decision is withdrawn, and the appeal is sustained.