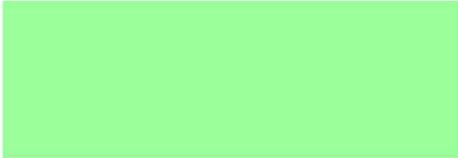




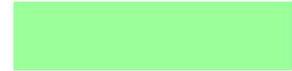
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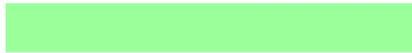


Date: **JUN 14 2013**

Office: OAKLAND PARK



IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the 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,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Trinidad & Tobago who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen daughter and son.

On March 31, 2012, the Field Office Director denied the application for a waiver (Form I-601), finding that the applicant failed to establish extreme hardship to a qualifying relative.

On appeal, counsel for the applicant submits additional evidence and asserts that the Field Office Director failed to consider hardship to the applicant's U.S. citizen daughter.

In support of the waiver application, the record includes, but is not limited to: a letter from counsel for the applicant; a letter from the applicant; letters from the applicant's daughter; a letter from the applicant's son; letters regarding the applicant's character; biographical information for the applicant, his former spouses and the applicant's children; employment and financial records for the applicant; employment and educational records for the applicant's daughter; educational records for the applicant's son; and documentation in connection with the applicant's criminal conviction and immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a 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.

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 Eleventh Circuit Court of Appeals, which has reaffirmed the traditional categorical and modified categorical approach for determining whether a crime involves moral turpitude, declining to follow the framework set forth by the Attorney General in *Matter of Silva-Trevino*, 24 I&N Dec. 24 I&N Dec. 687 (A.G. 2008). See *Fajardo v. Attorney General*, 659 F.3d 1301, 1310 (11th Cir. 2011). The Eleventh Circuit defines 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)). However, 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 *Jaggernauth v. U.S. Att'y Gen.*, 432 F.3d 1346, 1354-55 (11th Cir. 2005)).

The record shows that on February 1, 2001 before the Circuit/County Court in and for Broward County, Florida, the applicant pled nolo contendere to Aggravated Assault, in violation of Florida Statutes § 784.021, a felony, and Battery, in violation of Florida Statutes § 784.03(1)(a), a misdemeanor. He was sentenced to two years of probation along with fines, restricted from consumption of alcohol and drugs without prescription, ordered to attend substance abuse treatment and BIP (domestic violence) counseling, and was restricted from contact with his spouse except incident to child visitation.

Florida Statutes § 784.021, states that:

- (1) An "aggravated assault" is an assault:
 - (a) With a deadly weapon without intent to kill; or
 - (b) With an intent to commit a felony.
- (2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

In *Matter of Sanudo*, 23 I. & N. Dec. 968, 973 (BIA 2006), the Board of Immigration Appeals (BIA) noted that "it has often been found that moral turpitude necessarily inheres in assault and battery offenses that are defined by reference to the infliction of bodily harm upon a person whom society views as deserving of special protection." Additionally, assault and battery offenses may appropriately be classified as crimes of moral turpitude if they necessarily involve aggravating factors that significantly increase their culpability, and involve something more than the "minimal nonviolent touching" of the protected victim. *Matter of Sanudo, supra*. Here, the applicant was

ordered to attend a BIP (domestic violence) program and to not be in contact with his ex-spouse, except incident to child visitation, both indicating that his victim was his ex-spouse. As the applicant has not contested inadmissibility on appeal, and the record does not show the Field Office Director's determination to be in error, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

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 in his case, under section 212(h)(1)(B) 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 lawful permanent 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 U.S. citizen daughter and son are 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 885 (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 1292, 1293 (9th Cir. 1998)

(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 first qualifying relative is the applicant's U.S. citizen son. The record indicates that the applicant's son is 15 years old, was born in the United States, and attended [REDACTED] in Oakland Park, Florida as of February 14, 2012. The record indicates that the applicant is divorced from the child's mother and was ordered to provide \$500 in child support per month as part of his divorce. Counsel states that the applicant's son would suffer emotional and financial hardship if he were to be separated from the applicant. In particular, counsel states that the applicant's financial and emotional support is crucial to the applicant's son's pursuit of his dream to work in the field of diesel mechanics. In his letter, the applicant's son states that the applicant provides him emotional support as well as provides him with opportunities to learn about car engines. In regards to financial hardship, the record indicates that the applicant provides child support to his ex-wife to support his son. The record; however, does not indicate the extent to which the child's livelihood is dependent on that support. The record does not indicate the financial situation of the child's mother or the expenses incurred for the support of the applicant's son. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, it is not clear that the applicant could not support his son financially from Trinidad. In regards to emotional hardship, the AAO does not question that the applicant's son would suffer emotional hardship in the absence of his father; however, the evidence does not demonstrate that this hardship would be beyond that normally experienced by families separated due to removal or inadmissibility. The evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case, that would result from separation from the applicant is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the applicant's U.S. citizen daughter, the record indicates that the applicant's daughter is a 29-year-old naturalized U.S. citizen who is a native of Trinidad. The record also indicates that the applicant's daughter has maintained steady employment for over ten years with [REDACTED] in the area of customer service and has an Associate of Science degree in Radiologic Technology from [REDACTED] University. Counsel does not state what hardship the applicant's daughter would suffer if she were to be separated from the applicant. In her letter, the applicant's daughter states that if she were to be separated from her father, "visitation would be very difficult" due to the cost of air travel between Trinidad and the United States. The applicant's daughter also states that her father puts her and her brother before anything and anyone else and that she wants him to walk her down the aisle and be a grandfather to her future children. The record contains no additional documentation about the applicant's involvement in his daughter's life. Based on this limited information, the record does not establish that the hardships to the applicant's daughter can be distinguished from common hardships. Although the AAO notes that the applicant's daughter would likely endure hardship as a result of separation from the applicant, the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme."

In regards to the hardship that the applicant's son would suffer if he were to relocate to Trinidad, the record contains very limited information. Although the record establishes that the applicant pays child support to his ex-wife in support of his son, the record does not indicate the custody agreement between the applicant and his ex-wife. Additionally, although the record indicates that the applicant's son has attended school in the United States, there is no documentary evidence establishing why he would suffer extreme hardship if he were to relocate to Trinidad and continue his schooling there. Counsel states that the applicant's son considers himself American and has no ties in Trinidad. She also states that "the family does not own property in Trinidad where they could reside nor do they have any funds saved for relocation." Additionally, counsel states that the applicant's son would not be able to pursue his dream of serving in the U.S. Navy if he were to relocate, nor would he be afforded the same training, education, and experience there. It is not clear why the lack of property or family support in Trinidad would result in extreme hardship to the applicant's son if he were to relocate to that country. Moreover, the record does not establish that the applicant's son would be unable to complete his education in Trinidad and pursue future goals, including serving in the U.S. Navy if he were to relocate. Again, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Additionally, the AAO notes that the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. at 885; *Matter of Ngai*, 19 I&N Dec. at 246-47; *Matter of Kim*, 15 I&N Dec. at 89-90; *Matter of Shaughnessy*, 12 I&N Dec. at 813. Also, the fact that economic and educational opportunities for a child may be better in the United States than in a foreign country does not establish extreme hardship. See *Kim*, 15 I&N Dec. at 89-90. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's son relocate to Trinidad, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O*, 21 I&N Dec. at 383.

Counsel also states that the applicant's U.S. citizen daughter would suffer extreme hardship were she to relocate to Trinidad. In particular, counsel states that "being forced to obtain a foreign degree in Trinidad, [the applicant's daughter] would not have the ability to work and study at the same time and it would therefore be difficult if not impossible to continue paying for her financial obligations here in the United States." The record indicates that the applicant's daughter has a car loan in the amount of \$27,552 and student loans in the amount of \$29,443.64. The record also indicates that the applicant's daughter is employed by [REDACTED] in customer service and also holds employment with [REDACTED]. The AAO recognizes the applicant's daughter's long-term employment and her debt; however, no documentation was provided to show that the applicant's daughter would be unable to meet the terms of her loans were she to sell her car and relocate to Trinidad and Tobago. The record does not document whether the applicant's daughter could obtain employment abroad in the field of customer service, radiology, or another field or what income she could expect to earn. Again, the burden of proof is on the applicant in these proceedings. See Section 291 of the Act, 8 U.S.C. § 1361. 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. at 165. Also, although counsel and the applicant's daughter express concerns about personal safety in Trinidad, the record does not contain any documentation to substantiate those concerns. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's daughter relocate to Trinidad and Tobago, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's qualifying relatives' concerns over the applicant's immigration status are neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by either of the qualifying relatives, each considered individually in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion. The AAO notes that if it were to conduct a discretionary analysis, we would need to determine whether the applicant's conviction for aggravated assault would amount to a violent crime, requiring that the applicant prove "exceptional and extremely unusual hardship" to a qualifying relative. 8 C.F.R. § 212.7(d). Because the applicant has not established extreme hardship, we do not need to make a determination on this matter at this time.

The AAO also notes that the record indicates that the applicant may have engaged in prior marriage fraud subjecting him to the provision at section 204(c) of the Act, which states that:

Section 204(c) of the Act states:

[N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

Although we make no independent finding at this time, we note for any future proceedings that pursuant to 8 C.F.R. § 205.2, the approval of an I-130 petition is revocable when the necessity for the revocation comes to the attention of the Service.

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

ORDER: The appeal is dismissed.