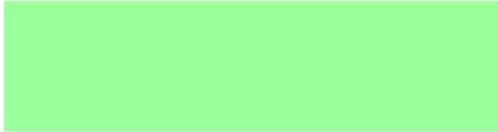


(b)(6)

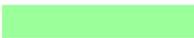
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090

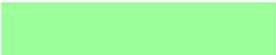


U.S. Citizenship
and Immigration
Services



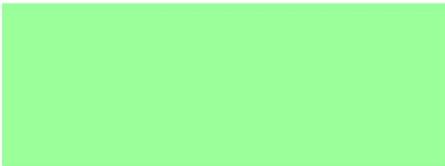
DATE **JUN 21 2013** OFFICE: OAKLAND PARK

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 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 in accordance with the instructions on 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 "Ron Rosenberg".

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 and Tobago 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 his U.S. citizen spouse, mother, and lawful permanent resident father.

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 March 10, 2010.

On appeal, counsel for the applicant asserts that the applicant has satisfied his burden of demonstrating extreme hardship to a qualifying relative, that there are erroneous allegations concerning the applicant's criminal history on a police report, and the applicant was sentenced to a term of probation rather than incarceration.

In support of the waiver application and appeal, the applicant submitted identity documents, medical documents concerning his father, financial documents, records concerning the applicant's criminal history, employment letters, and a letter from the applicant's spouse. 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.

(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.)

The present case falls within the jurisdiction of the Eleventh Circuit Court of Appeals. In evaluating whether an offense constitutes a crime involving moral turpitude, the Eleventh Circuit employs the categorical and modified categorical approach. *Fajardo v. U.S. Atty. Gen.*, 659 F.3d 1303, 1305-06 (11th Cir. 2011). “To determine whether a conviction for a particular crime constitutes a conviction of a crime involving moral turpitude, both [the Eleventh Circuit] and the BIA have historically looked to ‘the inherent nature of the offense, as defined in the relevant statute’” *Id.* at 1305. “If the statutory definition of a crime encompasses some conduct that categorically would be grounds for removal as well as other conduct that would not, then the record of conviction—i.e., the charging document, plea, verdict, and sentence—may also be considered.” *Id.* (citing *Jaggernaut v. U.S. Att’y Gen.*, 432 F.3d 1346, 1354–55 (11th Cir.2005)).

The Eleventh Circuit has rejected the methodology adopted by the Attorney General in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008). *Fajardo v. U.S. Atty. Gen.*, 659 F.3d 1303, 1308-11 (11th Cir. 2011). While the Attorney General determined that assessing whether a crime involves moral turpitude may include looking beyond the record of conviction, the Eleventh Circuit has stated that “[w]hether a crime involves the depravity or fraud necessary to be one of moral turpitude depends upon the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant's particular conduct.” *Itani v. Ashcroft*, 298 F.3d 1213, 1215–16 (11th Cir. 2002). In *Fajardo v. U.S. Atty. Gen.*, the Eleventh Circuit affirmed its reasoning in *Vuksanovic v. U.S. Attorney General*, 439 F.3d 1308, 1311 (11th Cir.2006), stating that “the determination that a crime involves moral turpitude is made categorically based on the

statutory definition or nature of the crime, not the specific conduct predicated a particular conviction." *Fajardo v. U.S. Atty. Gen.* 659 F.3d at 1308-09.

The record reflects that the applicant was convicted of five counts of grand theft pursuant to section 812.014(2)(c)(1) of the Florida Statutes in the Circuit Court of the [REDACTED] Florida. On August 13, 2007, the applicant was sentenced to 30 months of probation.

Florida Statute section 812.014 provides, in pertinent parts:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

(2) . . .

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

(1) Valued at \$300 or more, but less than \$5,000.

The Florida statute under which the applicant was convicted involves both temporary and permanent takings. A plain reading of section 812.014 indicates that it can be violated by knowingly obtaining or using the property of another with intent to, either temporarily or permanently, deprive an individual of his or her property or appropriate the property to his or her own use. The Board has determined that to constitute a crime involving moral turpitude, a theft offense must require "an intention to permanently deprive the owner of his property." *See In re Jurado-Delgado*, 24 I&N Dec. 29, 33 (BIA 2006). Therefore, the AAO cannot find that a violation of Florida Statutes section 812.014 is categorically a crime involving moral turpitude.

However, the record does not contain a full record of conviction for the applicant. The record does not contain an indictment, judgment of conviction, a signed guilty plea, or a plea transcript. Thus, the applicant has not shown that he was convicted under the portion of the statute that involves temporary takings. Further, the field office director found the applicant to be inadmissible for having been convicted of crimes involving moral turpitude and the applicant has not disputed this determination on appeal. It is noted that the burden of proof in the present proceedings is on the applicant to establish his eligibility for the immigrant visa and waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361.

The AAO finds that the applicant has failed to overcome the field office director's finding that he was convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal and the applicant has not shown the field office director's finding of inadmissibility to be erroneous, the AAO will not disturb the field office director's inadmissibility finding.

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

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse and child. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 reflects that the applicant is a 33-year-old native and citizen of Trinidad and Tobago. The applicant's spouse is a 25-year-old native of Trinidad and Tobago and citizen of the United States. The applicant's father is a 64-year-old native of Trinidad and Tobago and lawful permanent resident of the United States. The applicant's mother is a 56-year-old native of Trinidad and Tobago and citizen of the United States. The applicant is currently residing with his qualifying relatives in North Lauderdale, Florida.

Counsel for the applicant asserts that the applicant's father suffers from medical conditions and requires assistance with his daily activities. Counsel contends that the applicant's father is supported by the applicant with regard to his medications and transportation to checkups. The record contains a letter indicating that the applicant's father had disability benefits approved in October 2010. In his application for disability, the applicant's father self-reported several conditions and submitted a physician's evaluation reporting a fracture dislocation of his right ankle. There is no updated information in the record concerning the applicant's father's disability claim and benefits.

The record also contains a letter from a physician stating that the applicant's father was examined on July 15, 2008, which resulted in the following impressions: chronic kidney disease, stage III; non-nephrotic range proteinuria; hypertension; anemia; history of cerebral vascular accident, history of Bell's palsy; and dyslipidemia. It is noted that the record does not contain either a recent follow-up medical letter concerning the applicant's father's current condition or a medical letter asserting diagnoses for the applicant's father beyond medical impressions. The record does contain medical test results and prescriptions for the applicant's father ranging from 2008 to 2010. However, absent an explanation in plain language from the treating physician of the specific nature and severity of any current condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The record indicates that the applicant resides at the same address as his father, his mother, and the applicant's spouse. However, the record does not contain a letter from the applicant's father concerning his current medical condition or the amount of assistance he receives from the applicant. There is also no indication that the other members of the applicant's father's household would be unable to provide him with any support, as necessary.

Counsel for the applicant asserts that the applicant's mother has been with the applicant throughout his childhood. The applicant's spouse asserts that it would break the applicant's parents' hearts if the applicant had to return to Trinidad and Tobago. However, there is no further information, such as a letter from the applicant's mother, concerning the effect of a separation from the applicant on the applicant's mother.

The applicant's spouse asserts that the applicant looks after her and that their family would suffer emotional and financial hardship if they were separated from the applicant. The applicant's spouse contends that she and the applicant live for each other and that the applicant provides

support so that she can continue her studies. Counsel for the applicant asserts that the applicant's spouse would have to take a second job to support the applicant if he resided in Trinidad and Tobago. It is noted that the record does not contain any supporting documentation concerning the applicant's spouse's education and only contains tax records for the applicant and the applicant's spouse spanning the years from 2005-2008. The record contains an employment letter stating that, as of September 2, 2009, the applicant was employed by [REDACTED]. However, there are no updated tax records for the members of the applicant's household, including the applicant, since 2008 and there is insufficient documentation to determine that the applicant's spouse would be unable to meet her financial obligations in the absence of the applicant.

It is acknowledged that separation from a spouse or child often creates hardship for both parties and the evidence indicates that the applicant's parents and spouse would suffer emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's qualifying relatives would suffer extreme hardship upon separation from the applicant.

The applicant's spouse asserts that her entire family resides in the United States and that she has lived for several years in the United States. The applicant's spouse contends that if she relocated to Trinidad and Tobago, she would be moving to a country with political instability that lacks a good health and social system. The applicant's spouse further contends that with no means of financial support in Trinidad and Tobago, they would face financial instability and random violence.

Counsel for the applicant asserts that the applicant's spouse would have to leave behind her education in the United States and that the ability to find employment in Trinidad and Tobago is nearly impossible. As noted, the record does not contain any supporting documentation concerning the applicant's spouse's education and there is no indication that she would be unable to pursue her education in Trinidad and Tobago. Further, the record does not contain any information concerning conditions in Trinidad and Tobago, including the political, economic, or social climate of that country. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It is noted that the Department of State has not issued any current travel warnings concerning Trinidad and Tobago. It is also noted that the applicant's spouse is a native of Trinidad and Tobago.

There are no assertions in the record concerning any hardship the applicant's father or mother would experience upon relocation to Trinidad and Tobago. It is noted that the record indicates that the applicant's parents have two children who are U.S. citizens. It is also noted that the applicant's father and mother are both natives of Trinidad and Tobago. The record contains insufficient evidence, in the aggregate, to find that the applicant's qualifying relatives would suffer extreme hardship upon relocation to Trinidad and Tobago.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's qualifying relatives, considered in the aggregate, rise to the level of extreme hardship.

The AAO therefore finds that the applicant has failed to establish the requisite level of hardship to his U.S. citizen spouse and mother and lawful permanent resident father. As the applicant has not established the requisite level of 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 proving eligibility remains entirely with the applicant. 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.