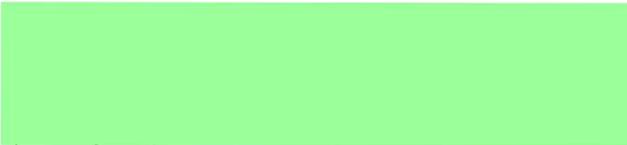


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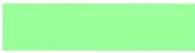
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, DC 20529-2090

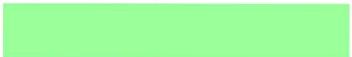


U.S. Citizenship  
and Immigration  
Services



DATE **MAR 08 2013** OFFICE: SANTO DOMINGO

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:

SELF-REPRESENTED

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", with a long horizontal flourish extending to the right.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Dominican Republic 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. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with her U.S. citizen daughter in the United States.

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 September 22, 2011.

On appeal, the applicant's daughter asserted that the applicant reopened the criminal proceedings against her and found that her case had lapsed. The applicant's daughter further asserts that the applicant is suffering from medical problems and her daughters need her with them in Puerto Rico.

In support of the waiver application and appeal, the applicant submitted letters from her daughter, court documents concerning the applicant's criminal history, identity documents, and several Spanish documents without accompanying translations<sup>1</sup>. 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.

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 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 if –
  - (1) (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

<sup>1</sup> According to 8 C.F.R. § 103.2(b)(3), “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.”

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.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record reflects that the applicant was convicted of three counts of violating the industrial property act, Article 166, sections a, b, c of Law No. 20-00 on Industrial Property in Dominican Republic and sentenced to 10 minimum wages. The Field Office Director found the applicant to be inadmissible to the United States for having been convicted of a crime involving moral turpitude.

Article 166 of Law No. 20-00 on Industrial Property, in pertinent part, provides:

Whoever intentionally commits the following offenses shall incur in three months to two years of correctional prison and a fine of RD\$50,000.00 to RD\$100,000.00 or both penalties:

a) Without the consent of the holder of a distinctive symbol, it uses an identical symbol or a registered trademark, or a direct copy or fraudulent imitation of that trademark, with relation to the products or services which it distinguishes, or to related products or services.

b) Without the consent of the holder of a distinctive symbol it carries out, with respect to a commercial name, a sign or emblem, the following acts:

i) It uses commercially an identical distinctive symbol for an identical or related business.

ii) It uses commercially a similar distinctive symbol when this is likely to cause confusion.

c) It uses commercially, with relation to a product or service, a geographic indication that is false or might deceive the public about the point of origin of that product or service or about the identity of the producer, manufacturer or merchant of the product or service.

The Board of Immigration Appeals states, in *Matter of Kochlani*, 24 I&N Dec. 128 (BIA 2007), that trafficking in counterfeit goods or services by using a spurious trademark is a crime involving moral turpitude. The applicant does not dispute her inadmissibility to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, but asserts that a court determined that her convictions have lapsed.

The applicant submitted a translated court document from the Court of Execution of the Penalty of the Judicial Department of the National District, Dominican Republic, entitled "Prescription Order of the Punishment." This court document declares a prescription of the criminal sanction that was previously imposed upon the applicant. It is noted that the prescription order relates to the penalties ordered against the applicant, but there is no indication that it affects the convictions entered against the applicant. Based upon the evidence submitted, the record reflects that the applicant remains convicted of three counts of violating the industrial property act, Article 166, sections a, b, c of Law No. 20-00 on Industrial Property in Dominican Republic, crimes involving moral turpitude.<sup>2</sup>

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 mother. 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*

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<sup>2</sup> The record also contains two Spanish documents without translation labeled as two certificates issued concerning the applicant. As these documents have no accompanying certified English translations, their contents cannot be considered in this decision.

*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 55 year-old native and citizen of Dominican Republic. The applicant’s daughter is a 32 year-old native of Dominican Republic and citizen of the United States. The applicant is currently residing in Dominican Republic and the applicant’s daughter is residing in San Juan, Puerto Rico.

The applicant’s daughter asserts that she and her sisters want the applicant in the United States with them. The applicant’s daughter contends that two of the applicant’s three daughters are pregnant and need her with them. It is acknowledged that separation from a parent nearly always creates hardship for both parties. However, the applicant has not established that the emotional hardship suffered by his spouse or mother would go beyond the common results of separation from a close family member due to separation.

The applicant’s daughter asserts that it would be easier for her if the applicant resided in the United States with them than if the applicant’s daughter relocated to Dominican Republic. The applicant’s daughter contends that she is accustomed to living in the United States and there is a faulty political, social, and economic system in Dominican Republic. However, the applicant has not provided sufficient documentation to support the claims regarding conditions in the

Dominican Republic. 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 applicant's daughter is a native of Dominican Republic who states that she has been residing in the United States for 16 years. It is also noted that the applicant's daughter states that her two sisters also reside in the United States. The applicant has not submitted country conditions reports concerning Dominican Republic, but it is noted that the Department of State has not currently issued a travel warning concerning this country. In the aggregate, the record contains insufficient evidence to find that the applicant's daughter would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Dominican Republic.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's daughter, 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. As the applicant has not established the requisite level of hardship, no purpose is served in determined whether she warrants a favorable exercise 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.