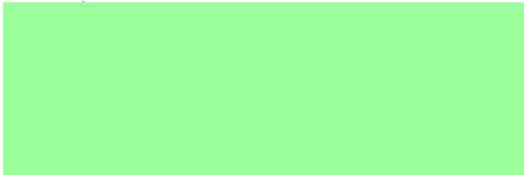


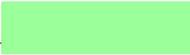
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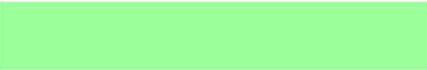
U.S. Citizenship  
and Immigration  
Services



Date: **MAR 11 2013** Office: MOSCOW, RUSSIA

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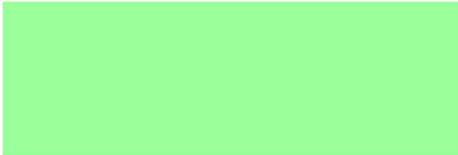
IN RE:

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 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,

for Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Russia 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's father and mother are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant has not established that he has been rehabilitated and is ineligible for a waiver under section 212(h)(1)(A) of the Act, and he failed to establish extreme hardship to a qualifying relative and is ineligible for a waiver under section 212(h)(1)(B) of the Act; she denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Field Office Director's Decision*, dated May 11, 2011.

On appeal, counsel details the applicant's rehabilitation and the hardship his parents would experience if his waiver application is denied. *Brief in Support of Appeal*, undated.

The record includes, but is not limited to, counsel's brief, medical records, financial records, statements from the applicant and his parents and criminal records. The entire record was reviewed and considered in arriving at 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.

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 attempted robbery under Illinois Statutes 720-5/18-1 on August 20, 1996 and robbery under Illinois Statutes 720-5/18-1-A on August 20, 1996 and he was sentenced to one year probation. The record reflects that he was convicted of retail theft under Illinois Statutes 720-5/16A-3(a) on November 29, 2000 and April 13, 2004. As the applicant has not contested his inadmissibility on appeal, and the record does not show that determination to be in error in relation to these convictions, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act. As such, the AAO will not address whether his other crimes, as detailed below, involve moral turpitude.

The applicant was convicted of intimidation under Illinois Statutes 720-5/12-6-A-1 on August 20, 1996 and he was sentenced to one year probation. The record also reflects that the applicant was convicted of criminal damage to property under Illinois Statutes 720-5/21-1-1(a) on October 27, 1998; he was convicted of disorderly conduct under Illinois Statutes 720-5/26-1A1 on October 18, 2000; and he was convicted of criminal damage to property under Illinois Statutes 720-5/21-1 in 2001.

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 –

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- (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.

The field office director evaluated the applicant's waiver application under sections 212(h)(1)(A) and 212(h)(1)(B) of the Act. The AAO notes that the activity resulting in the applicant's April 13, 2004 retail theft conviction occurred less than 15 years ago. Therefore, he is not eligible for a section 212(h)(1)(A) waiver and the AAO will not address any claims made regarding a section 212(h)(1)(A) waiver.

A waiver of inadmissibility under section 212(h) 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 lawfully 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 parents are the qualifying relative 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-Moralez*, 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 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.

Counsel states that relocation by the applicant's parents to Russia would be equal to a death sentence; the environment is strange, lonely and dangerous; and it would be unlikely, given the

current state of the U.S. real estate market, that a sale of their home would pay off their mortgage obligation.

The applicant states that his family came to the United States as refugees. The applicant's father states that he was persecuted in Russia and looked down upon as a Jew and he was granted refugee status. The immigration judge's decision states that the applicant was admitted to the United States in 1994 as a refugee. USCIS records reflect that the applicant and his parents were admitted to the United States as refugees on September 20, 1995.

The record includes a physician's letter dated July 9, 2004 stating that the applicant's father is under care for a neuro-psychiatric illness and associated emotional disturbances; and his ability to work and function is significantly deteriorated due to his illness. A 2003 social security benefits physician questionnaire reflects that the applicant's father has back pain, knee pain and elbow pain; and he has increased blood pressure, decreased mobility, joint pain, knee swelling, chronic depression and hypertension. An examination from 2002 reflects that the applicant's father was diagnosed with Major Depressive Disorder, Recurrent. The record includes evidence of supplemental security income payments from February 2002 until January 2004. The applicant's father's recent medical records reflect that his right kidney is non-functional and there is a small area of ischemia in his lateral region.

The AAO notes that some of the evidence of medical problems for the applicant's father are relatively old and are therefore given diminished weight. The AAO notes his current medical issues. Considering his medical issues and that the applicant's parents were admitted to the United States as refugees, the AAO finds that returning to Russia would constitute extreme hardship.

Counsel asserts that the applicant's mother is trying to make ends meet; his father is home alone all day, has clinical depression, is unable to initiate anything on his own, is totally helpless, cannot afford a caregiver, and spends hours in front of the window hoping for the applicant to help him; he has depression and numerous chronic illnesses; the applicant's departure escalated his mental condition; his financial situation has deteriorated drastically due to his inability to work, stress-related disorders due to separation from the applicant, and the loss of the applicant's financial support; the applicant's mother will lose her health insurance; the applicant's parents will continue to suffer from depression and seizures; the applicant's parents relationship with him was the cornerstone of their well-being and comfort; and the applicant's mother visits the applicant every second year at great expense to her financial and health.

Counsel lists the applicant's parents expenses and states that they could not sustain themselves without the applicant; and the applicant could earn a salary close to \$100,000 as a heating and cooling professional.

The applicant's father states that he only has one son; his life and health have been detrimentally affected by the loss of his son; he suffered a tremendous emotional breakdown from which he has not recovered; he has clinical depression and numerous debilitating illnesses; the applicant used to take him to the doctor, give him medication and care for him; he can hardly walk; and travel to see

his son is almost impossible. The applicant's father states that he has diabetes and high blood pressure and he states that he lives on one kidney.

As mentioned, the record includes a physician's letter dated July 9, 2004 stating that the applicant's father is under care for a neuro-psychiatric illness and associated emotional disturbances; his ability to work and function is significantly deteriorated due to his illness; his main social and emotional support comes from the applicant; and separation from the applicant will have a detrimental effect on his condition. The applicant's father's recent medical records reflect that his right kidney is non-functional and there is a small area of ischemia in his lateral region.

The applicant's mother states that the applicant is her only hope for emotional and financial well-being; her house will go into foreclosure unless the applicant sells his apartment in Russia; she lost her second job and her business depends on her 90-year-old landlord who allows her to pay \$570 for a place that normally rents for \$1980; the applicant has a U.S. education; the applicant calls them three times a week and only his calls can take them out of depression; the applicant can help her in her tailoring business; and the applicant can drive and assist with clients due to his fluency in English.

The AAO notes that the applicant's parents would experience emotional difficulty without the applicant. However, the record does not include recent medical records detailing the applicant's father's claimed mental condition and chronic medical issues, other than that his right kidney is non-functional and there is a small area of ischemia in his lateral region. The record does not include sufficient supporting documentary evidence to establish that the applicant's parents would experience financial hardship without him. The AAO finds that the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's parents would experience extreme hardship if they remained in the United States.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. However, we note that the applicant has been convicted of a violent crime, and discretion cannot be exercised in his favor unless he satisfies the requirements of 8 C.F.R. § 212.7(d).

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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. *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.