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

U.S. Citizenship and Immigration Services

(b)(6)

Date: MAR 2 7 2013 Office: OAKLAND PARK, FL FILE:

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:

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 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 request 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,

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 South Africa. The director found that the applicant was inadmissible under section 212(a)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A), for having been convicted of committing crimes involving moral turpitude. The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of Field Office Director*, dated August 5, 2011.

On appeal, the applicant's step-mother asserts that the applicant has lived in the United States since he was six years old and that he has no remaining ties to South Africa. She notes that the applicant considers the United States his home and that he has several close family members in this country, including his step-mother, father, brother, fiancée, and infant daughter. She states that the applicant's fiancée and young daughter would not be able to join him in South Africa due to the high unemployment and crime rates, their lack of ties to that country, and their unfamiliarity with the language and culture. The applicant's step-mother further contends that the applicant has accepted responsibility for the crimes he committed, that he has been punished, and that he has become a better person since his incarceration.

The record contains, but is not limited to: statements from the applicant and his step-mother; documentation relating to the applicant's criminal convictions; financial records; and documents establishing the applicant's relationship to his U.S. citizen family members. The entire record was reviewed and considered in rendering a decision on the appeal.

The record indicates that on April 10, 2007, the applicant was arrested in Florida for burglary, grand theft, and trespassing. He was 16 years old at the time of his arrest. He was subsequently charged in juvenile court with burglary and petty theft. On December 11, 2007, still aged 16, the applicant entered a guilty plea to burglary in violation of Fla. Stat. § 810.02(1). The petty theft charge was not prosecuted. Adjudication was withheld and the applicant was ordered to serve probation until age 19 and to complete 50 hours of community service. On May 19, 2009, the applicant pled guilty to violating the terms of his probation. Therefore, he was adjudicated delinquent and his probation was revoked and terminated as unsuccessful.

The record also shows that on April 30, 2009, at the age of 18, the applicant was arrested in Florida for burglary, grand theft, and drug paraphernalia. On January 26, 2010, at the age of 19, he pled guilty in the Fifteenth Judicial Circuit Court for Palm Beach County to burglary of a structure in violation of Fla. Stat. § 810.02(4) and to grand theft from a dwelling under Fla. Stat. § 812.014(2)(d). Adjudication was withheld as to both counts and the applicant was sentenced to 187 days in the Palm Beach County Jail with credit for 187 days served, two years of probation for each count (to be served consecutively), and 150 hours of community service.

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 AAO notes that the applicant's convictions may not be considered convictions under immigration law if they were considered acts of juvenile delinquency. In *Matter of Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (Board) stated, "[w]e have consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes." *Devison-Charles* at 1365; *see also Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981); *Matter of Ramirez-Rivero,* 18 I&N Dec. 135 (BIA 1981). Importantly, the Board added, "[w]e have also held that the standards established by Congress, as embodied in the FJDA [Federal Juvenile Delinquency Act], govern whether an offense is to be considered an act of delinquency or a crime." *Devison-Charles* at 1365.

> The FJDA defines a "juvenile" as "a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday," and "juvenile delinquency" as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult."

Ramirez-Rivero at 137 (citing 18 U.S.C. § 5031).

The Board has also explained that pursuant to the FJDA:

> Until a person is 21 years of age, he or she can be charged as a juvenile for an offense committed while under 18 years of age. Thus, the FJDA applies to any person below the age of 21 who has committed an offense before reaching his or her 18th birthday.

Devison-Charles at 1367 (citing 18 U.S.C. § 5031).

The AAO finds that the applicant's 2007 crime of burglary was an act of juvenile delinquency and hence not a conviction for immigration purposes. The applicant was 16 when he committed the offense and when he pled guilty, so he meets the definition of a juvenile as described in the FJDA. *See also Ramirez-Rivero* at 137. The record also demonstrates that the applicant entered his guilty plea in the Juvenile Division of the Fifteenth Judicial Circuit Court for Palm Beach County. Furthermore, the record shows that the applicant was "adjudicated delinquent," rather than convicted, when he violated his probation. Therefore, the applicant's 2007 crime of burglary is not a conviction for immigration purposes and cannot render him inadmissible under section 212(a)(2)(A) of the Act.

However, the AAO finds that the applicant's 2010 convictions for burglary and grand theft do qualify as convictions for immigration purposes. The applicant was 18 years old at the time he committed the crimes and he was 19 when he pled guilty. The conviction records show that his case was handled by the Fifteenth Judicial Circuit Court for Palm Beach County and there is no indication that he was placed in the Juvenile Division. Therefore, in 2010 he did not meet the FJDA definition of a juvenile and his guilty plea qualifies as a conviction for immigration purposes. *See Ramirez-Rivero* at 137; *Devison-Charles* at 1367.

Although adjudication was withheld in the applicant's case, a conviction exists where "a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt" and "the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed." Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A); *see also Devison-Charles* at 1369. In this case, the applicant pled guilty and the judge sentenced him to punishment in the form of imprisonment, probation, and community service. Therefore, the AAO finds that the applicant's 2010 convictions of burglary and grand theft qualify as convictions for immigration purposes.

At the time of the applicant's conviction, Fla. Stat. § 810.02 provided, in pertinent part:

> (1)(b) For offenses committed after July 1, 2001, "burglary" means:
>
> 1. Entering a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter . . . .
>
> . . . .

> (4) Burglary is a felony of the third degree . . . if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:
>
> > (a) Structure, and there is not another person in the structure at the time the offender enters or remains; or
> >
> > (b) Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

The applicant was also convicted of grand theft from a dwelling under Fla. Stat. § 812.014, which provided, in pertinent part:

> (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)(d) It is grand theft of the third degree and a felony of the third degree . . . if the property stolen is valued at $100 or more, but less than $300, and is taken from a dwelling . . . or from the unenclosed curtilage of a dwelling . . . .

The AAO notes that in Florida, a conviction for a third degree felony is punishable "by a term of imprisonment not exceeding 5 years." *See* Fla. Stat. §§ 810.02(4), 812.014(2)(d), 775.082(3)(d).

As the applicant has not contested inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding that the applicant's convictions for burglary and grand theft render him inadmissible under section 212(a)(2)(A)(i)(I)[1] of the Act.

The record establishes that the applicant has been convicted of crimes involving moral turpitude which render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

---

[1] The director also noted that the applicant was arrested in 2010 for a drug paraphernalia offense, which could render him inadmissible under section 212(a)(2)(A)(i)(II). However, the conviction records do not indicate that the applicant was charged or convicted for that offense, so the AAO will not discuss that issue. Even without a controlled substance offense, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) for committing a crime involving moral turpitude.

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –
>
> . . . .
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's U.S. citizen step-mother[2] and daughter. Hardship to the applicant is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 of Immigration Appeals (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 U.S. 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*

---

[2] While the applicant and his step-mother discuss potential hardship to the applicant's U.S. citizen fiancée, she is not the applicant's spouse so hardship to her cannot be considered except to the extent that it would cause hardship to the applicant's qualifying relatives.

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 v. INS*, 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.

On appeal, the applicant's step-mother alleges that a denial of the waiver application would result in hardship to the applicant's family in the United States. She asserts that removing the applicant to South Africa would "take a father from his child, a son from [his step-mother] and his father, a brother from his brother." *See* Form I-290B. She also states that the applicant and his U.S. citizen fiancée and daughter "would have no future in South Africa" because they have no family or friends there, do not speak the language and are unfamiliar with the culture, and would be at risk due to the high crime and unemployment rates. *Id.* The applicant's step-mother also emphasizes that the applicant has fulfilled his sentence, has learned from his mistakes, and is committed to raising his family. *Id.*

Finally, the applicant's step-mother contends that the applicant's unlawful presence in the United States should not be considered as a negative factor in his case. She alleges that she hired an attorney to resolve the applicant's status in 1998 but that unbeknownst to her, the attorney failed to file the paperwork. She further asserts that she filed another petition for the applicant in 2001 but that the former INS lost the applicant's file. She states that she filed a third petition for the

applicant in 2003. The applicant's step-mother therefore contends that the applicant's unlawful presence is due to circumstances beyond his control.

The AAO finds that the applicant has failed to demonstrate that his qualifying relatives will suffer extreme hardship if the waiver application is denied. Although the applicant's step-mother claims that his family will experience hardship if he is removed, there is no evidence in the record to support that claim. The applicant's step-mother's concerns regarding separation of the family mainly involve emotional hardship. While the AAO recognizes that a long-term separation would be very difficult for the applicant and his family, there is no evidence to suggest that such difficulties would rise above the level of emotional hardship which normally results from the removal or inadmissibility of a close family member. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568 (BIA 1999).

Additionally, while the applicant's step-mother claims that the applicant's daughter would be unable to live safely in South Africa, the record lacks evidence to support that claim. There is no documentary evidence to corroborate the claim that the unemployment and crime rates in South Africa are high, nor is there any indication that such circumstances would create a particular risk to the applicant's daughter or any other qualifying family member. In the absence of such evidence, the AAO cannot find that any of the applicant's qualifying relatives would suffer extreme hardship if they were to relocate with him to South Africa. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying relatives 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 the applicant merits a waiver as a matter of discretion.

In proceedings for an 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.