

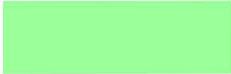


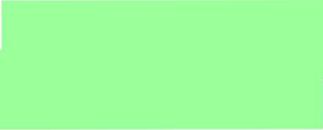
U.S. Citizenship
and Immigration
Services

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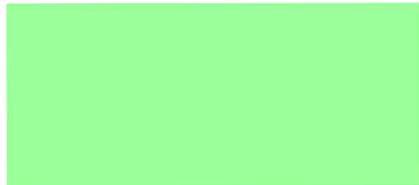
DATE: **APR 25 2014** Office: OAKLAND PARK, FL

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h), 8 U.S.C. § 1182(h) of the Immigration and Nationality Act

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of the Bahamas 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 a crime involving moral turpitude. The applicant's father and one of his children are U.S. citizens. 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.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated July 26, 2013.

On appeal, counsel states that the Field Office Director summarily dismissed the previously submitted evidence and reached an erroneous conclusion; he also submits additional evidence for consideration. *Form I-290B, Notice of Appeal or Motion*, received August 27, 2013.

The record includes, but is not limited to, statements from the applicant and his father, medical records for two of the applicant's children, financial records and criminal records.¹ 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

¹ The evidence indicates that the applicant has been arrested for other crimes between 1999 and 2011. However, because the director found the applicant inadmissible based on one specific crime involving moral turpitude, the AAO will not address whether he was convicted of the other crimes or whether they involve moral turpitude.

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. For cases arising in the Eleventh Circuit, the determination of whether a conviction is a crime involving moral turpitude begins with a categorical inquiry that "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); see also *Vuksanovic v. U.S. Att'y Gen.*, 439 F.3d 1308, 1311 (11th Cir. 2006) (citing *Taylor v. United States*, 495 U.S. 575, 600 (1990)); *Sosa-Martinez v. U.S. Att'y Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2004). However, where the statute under which an alien was convicted is "divisible"—that is, it contains some offenses that are [crimes involving moral turpitude] and others that are not[,] . . . the fact of conviction and the statutory language alone are insufficient to establish . . . under which subpart [the alien] was convicted." *Jaggernauth v. U.S. Att'y Gen.*, 432 F.3d 1346, 1354-55 (11th Cir. 2005). Under such circumstances, "the record of conviction – i.e., the charging document, plea, verdict, and sentence – may also be considered." *Fajardo v. U.S. Att'y Gen.*, 659 F.3d 1303, 1305 (11th Cir. 2011) (citing *Jaggernauth, supra*, at 1354-55). The Eleventh Circuit does not permit inquiry beyond the record of conviction. See *Fajardo, supra*, at 1310 (11th Cir. 2011) (rejecting *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)).

The record reflects that the applicant was convicted on November 1, 2007 of grand theft in violation of Florida Statutes § 812.014(2)(c)(1). Section 812.014 of the Florida Statutes states, 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) . . .
 - (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. . . .

In the instant case, the statute under which the applicant was convicted, Fl. Stat. § 812.014, is divisible, because it addresses both temporary and permanent takings. A plain reading of Fl. Stat. § 812.014 shows 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 BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. See *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). Therefore, the AAO cannot find that a violation of Fl. Stat. § 812.014 is categorically a crime involving moral turpitude.

Since the full range of conduct proscribed by the statute at hand does not constitute a crime involving moral turpitude, we will apply the modified categorical approach and review the record of conviction to determine under which part of the statute the applicant was convicted. The submitted record of conviction includes the Information, Circuit Court Disposition Order and Judgment.

The information document in the applicant's case reflects that the object of his theft was U.S. currency. The BIA found in *Matter of Grazley* that theft of cash reflects a permanent intent to deprive. *Id.* at 333. Thus, there is ample support that he committed theft with the intent to permanently deprive the owner of the property, and his act constitutes a crime involving moral turpitude. The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. He does not contest his inadmissibility on appeal. The applicant requires a waiver under section 212(h) of the Act.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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 [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)(1)(B) waiver of the bar to admission resulting from violation of 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 citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, in this case the applicant's father and daughter. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 AAO will first address the hardship the applicant's qualifying relatives would experience upon relocation to the Bahamas. The applicant states that he would like his children to have the opportunity to attend schools in the United States; however, only one of his children is a U.S. citizen and qualifying relative under section 212(h) of the Act. The applicant also claims he has no living accommodations for his family in the Bahamas and no family members there who could assist with caring for his children. The record reflects, however, that his 15 year-old U.S. citizen daughter was in her mother's custody in the Bahamas when she received medical treatment there, most recently in 2013.

He also mentions that two of his children, his U.S. citizen daughter and an adult son, are diabetic and insulin-dependent. A friend of the applicant in an undated letter states that the applicant's children receive "the best healthcare," and the applicant's daughter "is doing exceptionally well" in school. The record includes a class schedule for the applicant's daughter and medical records reflecting that she has diabetic ketoacidosis (DKA).

Although the applicant's father, a native of the Bahamas, also is a qualifying relative under section 212(h) of the Act, the record does not include evidence of hardship to the applicant's father if he relocates to the Bahamas.

The record also includes evidence that the applicant's 22 year-old son, who is neither a citizen nor a lawful permanent resident of the United States, has a history of DKA and was accepted to a Boston college in 2013. The record does not include evidence linking the hardship the applicant's son would experience to hardship to the qualifying relatives in this case, the applicant's father and daughter.

The record reflects that the applicant's daughter may experience some difficulties in the Bahamas related to her educational and medical issues. However, the record is not clear about the severity of her condition, the nature of the treatments she requires, and whether she could receive appropriate treatment in the Bahamas. The record includes lab results, prescriptions, and doctors' notes from the [REDACTED] in Nassau, Bahamas, prepared between 2008 and 2013. The record also is not clear about the applicant's daughter's level of integration into the American lifestyle, whether she maintains close ties to her mother, and whether she lived in the Bahamas while receiving medical care there. The record therefore lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's qualifying relative, his U.S. citizen daughter, would experience extreme hardship upon relocation to the Bahamas.

Addressing the hardship he would experience upon remaining in the United States without the applicant, the applicant's father, a professional musician and U.S. citizen since 1981, states that the applicant assists him with his day-to-day planning and business operations. He states that he is very close to the applicant, and he depends on the applicant emotionally.

Concerning the hardship his U.S. citizen daughter would experience if she were separated from the applicant, in her letter, the applicant's friend states generally that the applicant's children depend on the applicant and their hearts would be broken if he left.

The record does not include evidence, other than the statements above, of hardship that the applicant's father and daughter would experience without him in the United States. The school record submitted for the applicant's daughter indicates that she is enrolled in school in another state. Moreover, the applicant submits no evidence to corroborate his father's assertions that the applicant assists him with his business. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

The record does not reflect that refusal of admission would result in extreme hardship to a qualifying relative in this case. Therefore, the AAO finds that no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.