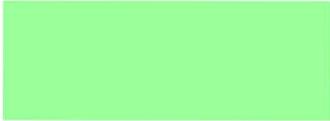


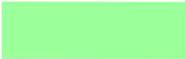


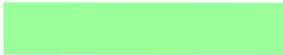
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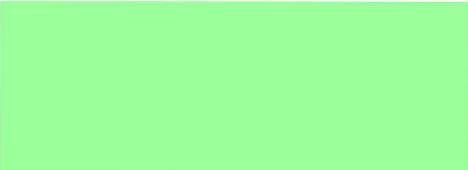
Date: **AUG 25 2014** Office: KENDALL, FL

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:



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, Kendall, 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 Cuba. The director found that the applicant was inadmissible under 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 committing a crime involving moral turpitude (CIMT). The applicant is seeking 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 director denied the waiver application, concluding that the applicant had failed to establish that the bar to admission would result in extreme hardship to a qualifying relative.

On appeal, filed on April 14, 2013 and received by the AAO on April 10, 2014, counsel for the applicant asserts that the Field Office Director erred in finding that a qualifying relative would not experience extreme hardship, and that the record establishes the applicant's spouse would experience psychological, financial and physical hardship rising to the level of extreme.

The record contains, but is not limited to, the following documents: a brief from counsel; a statement from the applicant's spouse's doctor; statements from the applicant and his spouse; court records related to the applicant's convictions; tax records for the applicant; marriage and birth certificates for the applicant and his spouse; photographs of the applicant, his spouse and their family; a mental health report for the applicant's spouse; school records for the applicant's child; a copy of a residential property deed in the applicant's spouse's name; and letters from acquaintances of the applicant attesting to his moral character.

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 record reflects that on September 17, 1999, the applicant was convicted of two counts of Forgery of a Credit Card, Florida Statutes Annotated (F.S.A.) § 817.60(6)(a), in [REDACTED] County, Florida. The applicant was sentenced to six months in jail and fined court fees.

F.S.A. § 817.60 states, in relevant part:

- (6) Forgery of credit card.--
 - (a) A person who, with intent to defraud a purported issuer or a person or organization providing money, goods, services, or anything else of value or

any other person, falsely makes, falsely embosses, or falsely alters in any manner a credit card or utters such a credit card or who, with intent to defraud, has a counterfeit credit card or any invoice, voucher, sales draft, or other representation or manifestation of a counterfeit credit card in his or her possession, custody, or control is guilty of credit card forgery and is subject to the penalties set forth in s. 817.67(2).

Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that “Whatever else the phrase ‘crime involving moral turpitude’ may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 U.S. 223, 232 (1951). Any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), *cert denied*, 383 U.S. 915 (1966).

In addition, F. S. A. § 817.60(6)(a) is a felony of the third degree punishable by a term of imprisonment not to exceed five years. The applicant is, therefore, not eligible for the petty offense exception found in section 212(a)(2)(A)(ii)(II). The applicant is inadmissible under section 212(a)(2)(A)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(I), for having committed a crime involving moral turpitude. The applicant does not contest this finding on appeal.

The record indicates that the applicant was also convicted in [REDACTED] County, Florida on December 3, 1996, of one count of petit theft in violation of section 812.014(3)(B) of the Florida Statutes, and on September 17, 1999, of Battery of Police Officer and Resisting Arrest Without Violence. However, as discussed above, the record establishes that the applicant has been convicted of at least one crime involving moral turpitude, so it is not necessary to examine these arrests to determine if they involve moral turpitude.

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 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 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;

....

In this case, the conduct which resulted in the applicant's conviction for a Crime Involving Moral Turpitude occurred more than 15 years ago, on July 22, 1999. As such, the applicant eligible for consideration under 212(h)(1)(A) of the Act.

The applicant asks that USCIS consider the fact that he was young, 22 years old, when he was convicted for various crimes between the years 1996 and 1999. Counsel for the applicant asserts that the applicant has been rehabilitated because it has been 15 years since he was convicted of a CIMT.

The record contains letters from friends and family members of the applicant asserting that he is of good moral character, is hardworking, honest, courteous and helpful, of great integrity, responsible, loyal, considerate, supportive and giving.

An examination of the record, however, indicates that the applicant has a long list of arrests, spanning from his arrival in the United States until 2005. The applicant was most recently arrested in 2004 for cocaine possession and in 2005 for Grand Theft. His driving record also lists multiple convictions for driving without a license and categorizes him as a "habitual offender." The applicant's convictions include crimes involving fraud, battery and theft. The positive factors asserted by the applicant's friends and family members do not outweigh the gravity of his criminal conduct in the United States. As such, the record does not establish that he has been rehabilitated, or that admitting him would not be contrary to the national welfare, safety and security of the United States.

The applicant may also be considered for a waiver under section 212(h)(1)(B).

A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative. Under section 212(h), qualifying relatives include U.S. citizen or lawful permanent resident spouses, parents, sons and daughters. The applicant must demonstrate extreme hardship to his U.S. citizen spouse or child. Hardship to the applicant is considered only to the extent it results in hardship to the qualifying relative. If extreme hardship to a qualifying relative is established, we then assess whether an 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 for the applicant asserts that the applicant's children and spouse rely on him for fatherly support. Counsel states that the applicant's spouse is experiencing emotional hardship due to the applicant's inadmissibility in the form of Major Depression, and that she is suffering from post-partum depression which will worsen if the applicant is removed. Counsel for the applicant asserts that the applicant's daughter is experiencing emotional hardship due to his inadmissibility. Counsel also asserts that the applicant has been steadily employed for 11 years and has provided valuable service to the community by supporting the people around him, citing to the letters from friends and family submitted into the record.

The record contains several mental health reports for the applicant's spouse and a letter from her primary care physician. Each report cites to the symptoms of post-partum depression and to the emotional impacts of the applicant's inadmissibility. A report dated October 2, 2012, diagnoses the applicant's spouse with Mixed Anxiety and Depressed Mood and with Cognitive Disorder Not Otherwise Specified. This evidence is sufficient to establish that the applicant's spouse will experience some emotional hardship if the applicant were removed, however, the applicant's spouse has been able to maintain her full time enrollment in school. Thus the extent of the hardship is not clear.

The record also contains copies of tax returns filed by the applicant. For the year 2011, the applicant reported a business loss which yielded an Adjusted Gross Income of \$6,380, with additional itemized deductions yielding a total yearly loss of over \$12,000. The record indicates that the applicant's spouse is attending school full time, but the record does not establish a complete picture of their income and expenses. Without evidence that more clearly demonstrates the applicant's financial contribution, the record does not establish that the applicant's spouse will experience financial hardship due to the applicant's removal.

The record indicates that the applicant's spouse would be a single parent of a young child if the applicant were removed. Counsel for the applicant has asserted that the applicant's older daughter would experience hardship, however there is no evidence to support this assertion and the record indicates that the applicant's older daughter resides with her mother. Letters from friends and family members attest to the applicant's role in supporting his family. However, it is unclear from the record that the applicant's spouse would be unable to provide child care for her child, obtain employment or otherwise rely on family members to meet the physical demands of single parenthood. The record indicates that the applicant's spouse has family and community ties in the United States which could mitigate the impacts of separation.

While the record demonstrates the applicant's spouse and children may experience some hardship due to separation from the applicant, this hardship, even when considered in the aggregate with other hardships due to separation, does not rise to the level of extreme.

Counsel for the applicant states that if the applicant and his spouse are removed to Cuba his spouse and children will not be safe. He cites to a U.S. State Department Country Report noting the Cuban government's lack of respect for the person. Counsel cites to the report and discusses attacks on political dissidents, prison conditions and corruption, asserting that relocation under these conditions would result in extreme hardship.

Counsel's assertions with regard to the hardships upon relocation are not sufficiently supported by the record. The applicant's spouse asserts that she would be devastated without the applicant, but fails to articulate any specific hardships upon relocation to Cuba. While we recognize assimilating to life in Cuba would present hardships to the applicant's family, there is no evidence that the applicant or his family would fall into the category of those targeted by the state or that they would suffer any greater hardship than others who relocated to the country. Counsel's reference to harassment of political organizations or poor prison conditions do not appear related to any specific hardship the applicant and his family would experience upon relocation.

The record fails to establish that the applicant's spouse would experience extreme hardship upon relocation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if he is refused admission. We recognize that the applicant's spouse states she will suffer emotionally and financially as a result of separation from the applicant. These assertions, however, are common hardships associated with removal and separation, and the record in this case does not establish that they rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. 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.