



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 29 2014**

Office: WEST PALM BEACH, FL

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:

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, West Palm Beach, 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 Poland 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 crimes involving moral turpitude. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and two U.S. citizen children.

In a decision dated July 12, 2013, the field office director found that the applicant had failed to establish that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility. The field office director also stated that the applicant did not warrant a favorable exercise of discretion as he has been convicted of three crimes involving moral turpitude with the last conviction occurring only two years before the waiver application was adjudicated. The decision does not indicate that the field officer director considered hardship to the applicant's children in his decision. The waiver application was denied accordingly.

On appeal, counsel states that the field office director failed to consider the extreme hardship the applicant's spouse would suffer as well as the extreme hardship the applicant's two sons would suffer as a result of the applicant's inadmissibility. Counsel states that the applicant's spouse will experience financial and emotional hardship as a result of the applicant's inadmissibility and the applicant's children will suffer emotional and psychological harm as a result of the applicant's inadmissibility. Counsel states that the applicant's qualifying relatives will suffer extreme hardship as a result of separation and as a result of relocating to Poland. Finally, counsel asserts that despite the applicant's recent conviction, his equities warrant a favorable exercise of discretion. Counsel submits additional hardship evidence on 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.

(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 Board of Immigration Appeals (the Board) 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.)

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 indicates that on February 15, 2000 in ██████ County, Illinois the applicant was convicted of Insurance Fraud under 720 Illinois Compiled Statutes (ILCS) 5 §46-1. The applicant was sentenced to one year probation and 10 days of community service. The record also indicates that on August 18, 2011 in ██████ County Florida, the applicant entered a plea of guilty to the charge of Grand Theft under Florida Statutes §812.014(1) and (2)(c). The applicant was sentenced to three years probation.

The record shows that both of the applicant's convictions are for crimes involving moral turpitude.

At the time of the applicant's conviction, Chapter 720 ILCS 5 §46-1 stated:

§ 46-1. Insurance fraud.

(a) A person commits the offense of insurance fraud when he or she knowingly obtains, attempts to obtain, or causes to be obtained, by deception, control over the property of an insurance company or self-insured entity by the making of a false claim or by causing a false claim to be made on any policy of insurance issued by an insurance company or by the making of a false claim to a self-insured entity, intending to deprive an insurance company or self-insured entity permanently of the use and benefit of that property.

Fraud, as a general rule, has been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that “[w]hatever 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. . . . The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 U.S. 223, 232 (1951).

At the time of the applicant's conviction, Fl. Statutes §812.014 stated, 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...

Generally, the crime of theft or larceny, whether grand or petty, involves moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139, 140-41 (BIA 1974). The common law definition of larceny is a wrongful taking and carrying away of the personal property of someone else with the intent to permanently deprive the owner of that property. See *Matter of V-Z-S-*, 22 I&N Dec. 1338, 1346 (BIA 2000). The Model Penal Code defines theft as the unlawful taking of, or the unlawful exercise of control over, movable property of another with the intent to deprive him thereof. *Id.* at 1343; see also Model Penal Code § 223.2(1) (1980). The Board of Immigration Appeals has stated that under the common law, larceny is distinguishable from theft in that larceny includes all takings with a criminal intent to permanently deprive the owner of the rights and benefits of ownership. *Matter of V-Z-S-*, 22 I&N Dec. at 1345-46. By contrast, the Board has noted that theft statutes may encompass

both temporary and permanent takings, and that a theft crime involves moral turpitude “only when a permanent taking is intended.” *Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973). Where cash is the object of the theft, it is reasonable to assume intent to permanently deprive. *Id.* Florida Statutes § 812.014(2)(c)(1) is divisible, as it prescribes both temporary and permanent takings of property. However, the charging document in the applicant's case reflects that his act of theft involved cash from a financial institution. Thus, as case law indicates we can assume the applicant's theft was committed 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.

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 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 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

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. 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). The qualifying relatives in the applicant's case are his U.S. citizen spouse and his two U.S. citizen children.

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. *Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (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.

The record of hardship includes: a statement from the applicant's spouse; medical documentation for the applicant; a statement from the applicant's son; a statement from the applicant; a psychosocial evaluation for the applicant's spouse and children dated 2012 and an update dated 2013; documentation regarding the applicant's children's performance in school and extracurricular activities; and financial documentation.

The applicant's spouse states that she and her two children will suffer extreme emotional and financial hardship as a result of the applicant's inadmissibility. She states that she is suffering

depression and lives in fear of her husband being taken away. The applicant states that his spouse would not be able to cope with raising two adolescent sons on her own. The applicant's spouse also states that her children, ages 12 and 15 years old, were born in the United States and do not read, write, or speak in Polish. They have spent their entire lives in the United States and have never been to Poland. She states that she works as a hairdresser, but that because of her health she is not sure how long she will be able to continue doing so. She states that the applicant is the main income earner in the house. Finally, she states that her son and spouse suffer from medical ailments that could not be treated in Poland.

The psychosocial evaluation from 2012 states that the applicant's spouse is suffering significant symptoms of depression and she is having difficulty at work. The evaluation recommends the applicant's spouse seek mental health care. The update to this evaluation, dated 2013, states that the applicant's spouse has been diagnosed with clinical depression and suffers from extreme panic attacks. However, the record contains no information on how this diagnosis was reached nor does it contain any information regarding follow-up treatments or possible documentation regarding the applicant's spouse's panic attacks.

The record also contains a report from an MRI that the applicant had done on his spine, but this report does not indicate the extent of the applicant's medical problems or how these problems would then affect his spouse or children. No medical records for the applicant's son were submitted.

The assertions of the applicant's spouse and child are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded [it] . . ."). Going on record without supporting 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The record does not indicate that the applicant's spouse and/or children would suffer extreme hardship as a result of relocation. The record does not contain documentation regarding country conditions in Poland. The applicant is a businessman and his wife is a hairdresser. The record does not show that the applicant or his spouse would not be able to find employment in Poland, resuming similar lives to what they now experience in the United States. We acknowledge that the transition for the applicant's children would be difficult, but considering that there is not evidence they would be economically disadvantaged or suffer from an extreme cultural adjustment by relocating to a European country, we do not find that their relocation would rise to the level of extreme hardship. Furthermore, the record does not establish that the applicant's spouse and/or children would suffer extreme hardship as a result of separation. The psychosocial evaluation in the record is not supported by any other documentation and does not provide details into how the licensed social worker came to her conclusions. The record fails to show that the applicant's spouse was seeking any treatment for her condition. Finally, the record does not show that the applicant would not be able to return to Poland, obtain employment, and help his family financially in the United States. Therefore, we do

not find that the applicant has demonstrated that his spouse and/or children will experience extreme hardship as a result of his inadmissibility.

The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(h) of the Act. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval 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.