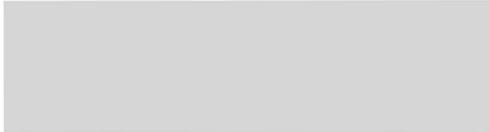


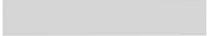


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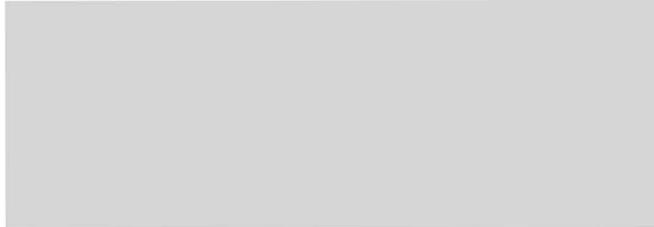


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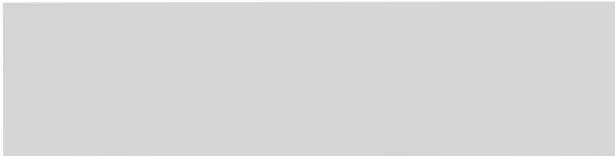
APPLICATION RECEIPT: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino Field Office, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Kazakhstan who was deemed inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. 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 applicant is the spouse of a U.S. citizen and the beneficiary of an approved Form I-130, Petition for Alien Relative.

The Field Office Director concluded that the applicant did not establish extreme hardship to his qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated August 21, 2012.

On appeal, the applicant, through counsel, suggests that the record supports finding the applicant eligible for the petty offense exception to his inadmissibility, because he was convicted of only one crime involving moral turpitude. *Form I-290B, Notice of Appeal or Motion*, dated September 18, 2012, and received by the AAO on December 11, 2014.

In support of the waiver application, the record includes, but is not limited to: briefs; letters from the applicant, his family members, and friends; documentation regarding the applicant's criminal history; identification and relationship documentation; school records; financial documentation; and photographs. 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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(II) the maximum penalty possible for the crime of which the alien was convicted . . . 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 (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 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 Field Office Director determined that the applicant was convicted of three crimes involving moral turpitude: grand theft in violation of section 487(a) of the California Penal Code (Cal. Penal Code) in [REDACTED] disorderly conduct in violation of section 647(b) of the Cal. Penal Code in [REDACTED] and domestic violence-battery in violation of Florida Statutes section 784.03.¹

The record indicates that on [REDACTED] 1995, the applicant was convicted in the Superior Court of California, [REDACTED] of grand theft in violation of Cal. Penal Code section 487(a). On [REDACTED] 1995, the applicant was given a suspended sentence of 10 days in jail, 12 months' summary probation, and fined.

Section 487(a) of the Cal. Penal Code, as in effect at the time of the applicant's conviction, states in pertinent part:

Grand theft is theft committed . . .

When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950)

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

¹ The Field Office Director refers to section 212(a)(i)(I) of the Act, which appears to be a typographical error, because this is not a valid section of the Act. Moreover, she quotes from, and bases her decision on, the correct section of the Act, 212(a)(2)(A)(i)(I).

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.* Further, in *Matter of Jurado*, the Board found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. 24 I&N Dec. 29, 33-34 (BIA 2006).

In the instant case, the statute under which the applicant was convicted, Cal. Penal Code § 487(a), involves permanent takings. The Ninth Circuit Court of Appeals in *Castillo-Cruz v. Holder* determined that any crime of theft in California requires the specific intent to deprive the victim of his or her property permanently, and therefore is a crime categorically involving moral turpitude. 581 F.3d 1154, 1159-60 (9th Cir. 2009). The Board has also held that the crime of grand theft in violation of section 487(a) of the California Penal Code categorically involves moral turpitude. *Matter of Chen*, 10 I&N Dec. 671, 672 (BIA 1964); *Matter of V-T-*, 2 I&N Dec. 213, 214 (BIA 1944). Therefore, we find that a violation of Cal. Penal Code § 487(a) is categorically a crime involving moral turpitude (CIMT).

The record reflects that on [REDACTED] 1998, the applicant also was convicted for violating section 647(b) Cal. Penal Code, disorderly conduct-prostitution.

Cal. Penal Code section 647, as in effect at the time of the applicant’s conviction, provides in pertinent part:

[E]very person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

...

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

The applicant suggests, on appeal, that section 212(a)(2)(A)(i)(II) of the Act, also known as the petty offense exception, applies to him because he spent “no time” in jail. The record reflects that the applicant was convicted of more than one crime involving moral turpitude. The petty offense exception applies where the alien has committed only one crime involving moral turpitude.

In the present case, the record reflects that the applicant has been convicted of more than one crime involving moral turpitude. Therefore he is ineligible for the petty offense exception. Because the

applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his convictions for crimes involving moral turpitude, he may request a waiver under section 212(h) of the Act.

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

The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] 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 [Secretary] 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

The applicant is eligible to file a waiver under section 212(h)(1)(A) and (B) of the Act. We will first address whether the applicant has established that he meets the requirements of section 212(h)(1)(A) of the Act.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

The record indicates that the applicant was convicted in the Superior Court of California, [REDACTED] of grand theft, in violation of Cal. Penal Code section 487(a) on [REDACTED] 1995, almost 20 years ago. The record also indicates that the applicant was convicted of disorderly conduct-prostitution, in violation of Cal. Penal Code section 647(b), on [REDACTED] 1998, about 17 years ago. Two of the applicant's convictions, therefore, are based on activities that took place more than 15 years ago.

Since the criminal convictions for which the applicant was found inadmissible occurred more than 15 years ago, his ground of inadmissibility may be waived under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be

contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated.

The applicant, however, has not established that he has been rehabilitated, given his more recent criminal activity. The record contains evidence that the applicant continued to violate the law after his last conviction for a crime involving moral turpitude in 1998. On [REDACTED] 2004, the applicant was convicted of violating Cal. Penal Code section 415, for malicious and willful disturbance of the peace. In [REDACTED] 2009, he was arrested in Nevada and charged with battery. On [REDACTED] 2011, the applicant was convicted for reckless driving with willful or wanton disregard for the safety of persons or property, a violation of section 23103(a) of the California Vehicle Code. The applicant's convictions in 2004 and 2011, following convictions in 1995 and 1998, preclude a finding of rehabilitation.

In addition, the applicant provides a letter from his step-son, who states that the applicant has been a great step-dad to him and his twin brother. Both the applicant's step-son and wife state that the applicant knows his actions were wrong. The applicant, moreover, calls his actions "stupid," but without more, this statement does not support finding he has been rehabilitated.

The applicant, therefore, has not established that he merits a waiver under section 212(h)(1)(A) of the Act.

We will next address whether the applicant has established that he meets the requirements of section 212(h)(1)(B).

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

The [Secretary] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if-

(1)

(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 and

(2) the [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. . . .

Section 212(a)(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996). The applicant's qualifying relatives are his U.S. citizen wife and son.

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 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 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.

We will first address the applicant's evidence of hardship to his spouse if she remains in the United States. The applicant's wife says that the applicant has helped her care for her twin sons, now age 22, from a prior marriage and that she feels depressed and anxious about a possible separation. The applicant's stepson says that she cries frequently over the possibility that the applicant will be deported. A psychologist states that the cause of the applicant's wife's depression and anxiety is related to the applicant's immigration status. The applicant's father-in-law expresses concern about the emotional hardship that separation would cause the applicant's wife. He says that the applicant's wife "will completely break down."

The applicant also states that his wife needs his financial and physical support. The applicant's father-in-law expresses concern about the financial impact of separation on the applicant's spouse. To support assertions of financial hardship, the record contains a bank statement and 2007 tax forms for the applicant's wife,; a car insurance policy that expressly excludes the applicant, and copies of checks from a joint account. This evidence, however, does not establish that the applicant financially supports his spouse.

The applicant and his wife have one child, now age 10. The applicant's wife, stepson and father-in-law express concern about the effects of separation on the applicant's child and the resulting emotional hardship he would experience. According to the applicant's stepson, the applicant's son "won't make it without [the applicant]," and he follows the applicant everywhere. The applicant's father-in-law says that the applicant's wife cannot take care of her children alone. The psychologist notes that if the applicant and his son are separated, it "will have a tremendous impact" on his son, because their separation would occur "during crucial years of his development."

While the record supports finding that the applicant's wife and son would experience a degree of emotional hardship if they remain in the United States without him, the applicant has not shown that their hardship would be more severe than that typically experienced as the result of separation. The record lacks sufficient evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that the applicant's qualifying spouse or son would suffer extreme hardship upon separation from the applicant.

Concerning the hardship the applicant's spouse, a native of Russia, would experience if she relocates with the applicant to Kazakhstan, the applicant's wife, expresses concern about her personal safety. She says that the applicant's sister-in-law died in a car accident and suggests that the government killed the applicant's parents. She suggests that the applicant's father was intentionally infected with a disease while having routine inoculations at his workplace. The applicant submits death certificates for his father and sister-in-law that indicate his father died in 1995 from liver failure and his sister-in-law died in 2010 due to a brain contusion and spinal cord rupture. The applicant's wife says she does not speak Kazak and is concerned about government corruption in Kazakhstan. A psychologist, finding the applicant's spouse is depressed and anxious, says that the applicant's wife already "experienced a tremendous trauma when her family was persecuted in Russia." The applicant's wife's concern about moving to a country where she does not speak the language is noted. The applicant, however, has not provided details about the trauma his wife experienced in Russia.

While the applicant's spouse would experience a degree of emotional hardship as a result of relocation, taking into account her unfamiliarity with Kazakhstan, the record lacks sufficient evidence of other types of hardship, including financial and medical hardship that, considered in the aggregate, establishes that she would suffer extreme hardship upon relocation to Kazakhstan.

Concerning the hardship the applicant's son would experience if he relocates with the applicant to Kazakhstan, the applicant's father-in-law asserts that the applicant's son would not have a normal life there. In addition, the applicant's stepson states Kazakhstan is dangerous. The applicant states that he cannot take his family to Kazakhstan, "especially after the killings of [his] family." He says that his parents died because his father refused to obey with an employer's request to do something illegal. The applicant does not submit corroborative evidence to support his claim of hardship to his son, related to high levels of crime and corruption in Kazakhstan.

Although it is reasonable to conclude that the applicant's son may experience emotional hardship upon relocation, the applicant does not submit sufficient evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that his son would suffer extreme hardship upon relocation to Kazakhstan.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to his U.S. citizen spouse or child, as required under section 212(a)(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 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.

ORDER: The appeal is dismissed.