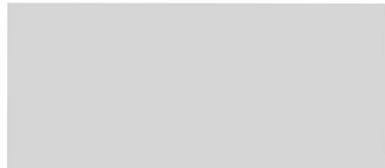




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 04 2015

FILE: [REDACTED]

APPLICATION RECEIPT: [REDACTED]

IN RE: [REDACTED]

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of Israel. In a decision dated April 25, 2014, the Field Office 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 crimes involving moral turpitude. The Field Office Director indicated that the applicant requires a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). However, the Field Office Director concluded that the applicant failed to establish that his qualifying spouse would experience extreme hardship, and therefore he was ineligible for a waiver under section 212(h) of the Act. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in denying the applicant's waiver application. The applicant further indicates that he has established that his U.S. citizen spouse will experience severe financial, emotional, psychological and cultural hardships that considered together amount to extreme hardship. Counsel also asserts that the applicant's conviction occurred in 2001, over 14 years ago, and that he has been rehabilitated, with no other additional issues with the law.

The record contains, but is not limited to: an appeal brief and other correspondence from the applicant's attorneys; a letter from the qualifying spouse; identification documents for the qualifying spouse, the applicant and his mother; a psychological evaluation of the qualifying spouse with the psychiatrist's qualification materials; criminal records for the applicant; financial documentation; medical documentation regarding the applicant; automobile insurance documents and photographs. The entire record was reviewed and considered in rendering this decision.

We will first address the finding of inadmissibility. Section 212(a)(2)(A)(i)(I) 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 (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 Ninth Circuit, the determination of whether a crime is a crime involving moral turpitude first requires the categorical inquiry set forth in *Taylor v. United States*, 110 S.Ct. 2143 (1990). See *Nicanor-Romero v. Mukasey*, 523 F.3d 999, 1004 (9th Cir. 2008), *overruled on other grounds by Marmolejo-Campos v. Holder*, 58 F.3d 903, 911 (9th Cir. 2009). The purpose of the categorical approach is to determine whether the full range of conduct encompassed by the statute constitutes a crime of moral turpitude. *Cuevas-Gaspar v. Gonzalez*, 430 F.3d 1013, 1017 (9th Cir. 2005).

On [REDACTED] the applicant pled nolo contendere and was found guilty of Unauthorized Use of Personal Identifying Information of Another Person in violation of Section 530.5(a) of the California Penal Code and Forgery of a Check in violation of Section 470(d) of the California Penal Code, for acts which were committed on or about [REDACTED]. On [REDACTED] the applicant was sentenced to eight months in prison for violating Section 530.5(a) of the California Penal Code and , three years in prison for violating Section 470(d) of the California Penal Code. These sentences were to be served concurrently, but were suspended and the applicant was placed on probation for 5 years.

At the time of the applicant's conviction, section 530.5(a) of the California Penal Code stated in part:

(a) Every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person without the authorization of that person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars (\$1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars (\$10,000), or both that imprisonment and fine.

At the time of the applicant's conviction, section 470(d) of the California Penal Code stated in part:

Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order, post note, draft, any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for

money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b).

Crimes involving fraud or the intent to defraud have long been held to constitute crimes involving moral turpitude. *Jordan v. De George*, 341 U.S. 223, 232 (1951); *see also Matter of Mclean*, 12 I&N Dec. 551, 552 (BIA 1967). The Board of Immigration Appeals (BIA) has also determined that even where fraud is not specifically proscribed in a statute, it may be “so inextricably woven into the statute as to clearly be an ingredient of the crime.” *Matter of Flores*, 17 I&N Dec. 225, 228 (BIA 1980) (holding that the respondent’s conviction for uttering or selling false or counterfeit paper relating to registry of aliens was a crime involving moral turpitude although intent to defraud was not an element of the crime); *see also, Matter of Kochlani*, 24 I&N Dec. 128, 130-131 (BIA 2007) (indicating that an act that requires proof that a defendant willfully or knowingly committed an act, that act, even though committed without a specific intent to defraud is inherently fraudulent); *Matter of Tejwani*, 24 I&N Dec. 97, 98 (BIA 2007)(finding a conviction for money laundering to be categorically a crime involving moral turpitude as conviction required proof that the respondent knew that the monetary instruments involved were the products of criminal conduct and that his handling of these instruments was intended it to conceal or disguise their criminal origins).

The statutory definition of forgery varies by jurisdiction. However, it has been generally defined as “the false making or materially altering, with intent to defraud, of any writing, which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability.” *Wright v. United States*, 172 F.2d 310, 311 (9th Cir. 1949); *see also 37 C.J.S. Forgery* § 1 (2013). Fraud and forgery crimes have, as a general rule, been held to involve moral turpitude. *See Matter of Islam*, 25 I&N Dec. 637, 638 (BIA 2011) (“Forgery . . . ha[s] long been considered to be [a] crime[] involving moral turpitude”); *Matter of Seda*, 17 I&N Dec. 550, 552 (BIA 1980) (“[T]he respondent pleaded guilty to forgery, which is a crime involving moral turpitude.”); *Matter of Jimenez*, 14 I&N Dec. 442, 443 (BIA 1973) (“Forgery has been held to be a crime involving moral turpitude.”); *Matter of A-*, 5 I&N Dec. 52, 53 (BIA 1953) (“Where fraud or forgery is involved, it is clear that a finding of moral turpitude is required and we need not inquire as to whether or not the crime is malum prohibitum or malum in se”); *Jordan v. De George*, 341 U.S. 223, 232 (1951)(“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. . . . The

phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct”).

The intent to defraud is an element under section 470(d) of the California Penal Code. As such, the record supports the conclusion that 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. We will not address whether section 530.5(a) of the California Penal Code represents a crime involving moral turpitude, given that the applicant’s conviction pursuant to section 470(d) of the California Penal Code is categorically a crime involving moral turpitude.

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:

(h) The Attorney General [Secretary of the Department of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that -

(i) . . . 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

(ii) 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 [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) waiver of the bar to admission resulting from a 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. 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 *Mower 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 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.

With regard to the hardship the applicant's qualifying spouse would experience upon separation, the qualifying spouse asserts that she would experience mental, emotional, physical and financial hardships if the applicant returns to Israel due to his inadmissibility. She indicates in her letter that

she has been diagnosed with a mental disorder and with a severe learning disabilities, and that, due to these issues, she has struggled socially, has dealt with insecurities, and has had to cope with her mental and emotional instabilities. She states that she has had a history of depression, beginning with the death of her best and only friend when she was 17 years old. She states that she was placed into treatment for this severe depression for eight months. According to the qualifying spouse, the death of her father also triggered a major attack of depression, requiring 20 months of treatment and the support from the applicant. Following the applicant's immigration interview in April 2012 and the news of her potential separation from the applicant, the qualifying spouse's depression and emotional issues reappeared, and she indicates that she began experiencing panic attacks and overwhelming anxiety over the fear of losing him.

A detailed evaluation from a psychiatrist confirms that the qualifying spouse suffers from learning disabilities including severe dyslexia, attention deficit hyperactivity disorder and reading disorder of recall and comprehension. The psychiatrist also asserts that the qualifying spouse has had a lifetime history of mental illness, including major depressive disorder and generalized anxiety disorder, and that her depressive disorder is an inherited disease. The psychiatrist points out that the qualifying spouse has had relatives who have committed suicide as a result of their depression and that the qualifying spouse is also struggling with thoughts of suicide. He indicates that she has also developed suicidal ideation, where she contemplates daily ways in which she could end her life. As a result of these various psychological issues, the psychiatrist indicates that the qualifying spouse has been prescribed several medications to treat her psychiatric illnesses and provides a list of her medications.

The mental health evaluation of the qualifying spouse also states that the qualifying spouse is experiencing severe panic attacks since she has learned that the applicant may have to return to Israel or that she may have to join him. In addition, the psychiatrist indicates that the qualifying spouse has been unable to eat, has lost more than 10 per cent of her weight, and that she has been unable to sleep for more than thirty minutes without waking up with tightness in her chest or difficulty breathing. The psychiatrist asserts that the applicant acts as her caretaker and that she would be unable to handle the day to day tasks of everyday living without his assistance. In her letter, the qualifying spouse also indicates that the applicant supports her emotionally and physically, and that she is dependent upon him.

Furthermore, the qualifying spouse indicates that she was recently demoted at work and that her salary has decreased. The psychiatrist indicates the same, and specifies that her demotion at work resulted in a 33% reduction in pay due to her problems with functioning at work. The psychiatrist believes that there is a very high likelihood based upon the applicant's current trajectory of her condition and work performance that, without her husband, she would most likely be unable to remain gainfully employed. However, the record does not contain any objective financial documentation to confirm this recent demotion of the qualifying spouse. Nonetheless, considering the evidence regarding the emotional and psychological hardships in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of her separation from the applicant.

With respect to the potential hardship that the qualifying spouse could encounter upon relocation to Israel, the qualifying spouse states that she was born and raised in the United States and that her family and friends all live in the United States. She states that relocation will be extremely difficult

for her, and that just thinking about relocating gives her headaches and palpitations. She also indicates that she is not well-equipped to cope with stressful events because of her disorders. The psychiatrist confirms that the qualifying spouse is experiencing extreme psychiatric distress and physical pain due to her possible relocation to Israel. She also fears that as a Catholic, she will be isolated in Israel. In addition, the psychiatrist states that the qualifying spouse's severe learning disabilities will make it extremely difficult for her to learn Hebrew, which will also make it difficult for her to obtain employment in Israel. Considering the evidence in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of relocating to Israel with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).
Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, whether she accompanied the applicant or remained in the United States; the applicant's ties to the United States, including to his U.S. citizen

spouse and brother and his legal permanent resident mother; and the passage of nearly 15 years since the events which led to his criminal convictions. The unfavorable factors in this matter are the applicant's criminal convictions and his presence in the United States without lawful immigration status.

Although the applicant's immigration and criminal violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

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 been met.

ORDER: The appeal is sustained.