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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

Date: FEB 14 2012 Office: LOS ANGELES FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Perry Rhew
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 dismissed

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure benefits under the Act by willful misrepresentation. The record shows that the applicant is also inadmissible 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.[1] He seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident parents.

The field office director found that the applicant failed to establish that his parents would suffer extreme hardship should the applicant reside outside the United States, and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director,* dated September 3, 2008.

On appeal, the applicant asserts that he and his family will suffer emotional hardship if the present waiver application is denied, that his mother will face physical hardship without his assistance with her medical problems, and that he will face persecution in Mexico due to his sexual orientation. *Statements from the Applicant*, dated October 30, 2008 and December 27, 2011.[2]

The record contains, but is not limited to: statements from the applicant; copies of tax filings for the applicant's parents from 1998 and earlier; documentation of the applicant's mothers medical treatment; and documentation in connection with the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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[1] The field office director did not indicate that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. However, an application that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

[2] The letterhead of the 2011 statement indicates representation by [redacted] However, as no Form G-28, Notice of Entry of Appearance as Attorney or Representative, was submitted, the AAO deems the applicant to be self-represented for the purposes of this appeal.

The record shows that on July 21, 1999 the applicant was convicted of two offenses under California Penal Code § 472 for forgery of an official seal. Approximately six months later on or about January 21, 2000, the applicant filed a Form I-485 application to adjust his status to lawful permanent resident. In Part 3, Item 1b, when asked "have you ever, in or outside the U.S. . . . been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations" the applicant answered "no." Based on this misrepresentation, the field office director found that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure benefits under the Act by willful misrepresentation. The applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act.

The materiality of the applicant's misrepresentation depends on whether his convictions under California Penal Code § 472 also render him inadmissible 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.

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the "record of conviction" to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708. If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this "does not mean that the parties would be free to present any and all evidence bearing on an alien's conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself." *Id.* at 703.

At the time of the applicant's convictions, California Penal Code § 472 stated:

> Every person who, with intent to defraud another, forges, or counterfeits the seal of this State, the seal of any public officer authorized by law, the seal of any Court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this State, or of any other State, Government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willingly conceals the same, is guilty of forgery.

This statute identifies three distinct categories of conduct that may lead to a conviction for forgery. The first clause addresses those "who, with intent to defraud another, forges, or counterfeits the seal of this State, the seal of any public officer authorized by law, the seal of any Court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this State, or of any other State, Government, or country." As a general rule, crimes that include intent to defraud as a requirement have been held to involve moral turpitude. *Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992). It is clear from the statutory language that convictions under the first clause of California Penal Code § 472 constitute crimes involving moral turpitude.

However, the second clause reaches an individual "who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal [identified in the first clause]." The third clause reaches an individual "who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willingly conceals the same." The second and third clauses do not include as an explicit element intent to defraud. The present matter arises within the Ninth Circuit. In *Blanco v. Mukasey*, 518 F.3d 714, 719 (9th Cir. 2008), the Ninth Circuit Court of Appeals stated:

> Our cases hold that intent to defraud is implicit in the nature of the crime when the individual makes false statements in order to procure something of value, either monetary or non-monetary. . . . Fraud therefore does not equate with mere dishonesty, because fraud requires an attempt to induce another to act to his or her detriment. One can act dishonestly without seeking to induce reliance. Our cases have therefore recognized fraudulent intent only when the individual employs false statements to obtain something tangible.

518 F.3d at 719 (citations omitted).

In response to a request for evidence issued on October 5, 2011, the applicant provided the complaint filed against him on June 15, 1999. The complaint clearly shows that he was charged in both counts under California Penal Code § 472 with acting with an intent to defraud. Specifically, the complaint states that the applicant "did unlawfully and with intent to defraud, forge and counterfeit a[n] Alien Registration card seal and did falsely make[,] forge and counterfeit an impression purporting to be an impression of said seal, and did possess such counterfeited seal and impression, knowing it to be counterfeited and did conceal said seal."

As the applicant was convicted under California Penal Code § 472 with an intent to defraud, his offenses constitute crimes involving moral turpitude.

Accordingly, the applicant had been convicted of two crimes involving moral turpitude as of the date that he filed his Form I-485 application to adjust his status to lawful permanent, and he was inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Therefore, his failure to reveal his convictions was material, and he is further inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure benefits under the Act by willful misrepresentation.

The record further shows that the applicant pled guilty to a theft offense in violation of section 484(a) of the California Penal Code for his conduct on or about November 19, 2008. The Ninth Circuit Court of Appeals addressed the issue of whether California Penal Code § 484(a) constitutes a crime involving moral turpitude in *Castillo-Cruz*. *See* 581 F.3d at 1157. The Ninth Circuit reviewed lower court case law on convictions under California Penal Code § 484(a), and determined that a conviction for theft (grand or petty) under the California Penal Code requires the specific intent to deprive the victim of his or her property permanently. *Id.* at 1160 (citations omitted). Therefore, the AAO finds that a conviction for theft under California Penal Code § 484(a) is categorically a crime involving moral turpitude because it requires the permanent intent to deprive the victim of his or her property. Thus, the applicant was convicted of a third crime involving moral turpitude during the pendency of the present appeal.

The applicant requires waivers of inadmissibility under sections 212(h) and 212(i) of the Act. Section 212(h) of the Act provides, in pertinent part:

> 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 . . . .
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [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
>
> (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 [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 Attorney General [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(i) of the Act provides, in pertinent part:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) 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 or parent of the applicant. 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. The applicant's mother and father are the only qualifying relatives in this case. 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).

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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

In a statement dated December 27, 2011, the applicant explains that his mother was diagnosed with diabetes in 2000, and she requires regular medical care. The applicant asserts that he is the one who is responsible for caring for his mother. He provides that he has three siblings who are ages 15, 27, and 29 years old. He notes that his youngest brother is a high school student, and his older sister and brother are both married, employed, and with families. He states that he is the only one who is currently unemployed and that his mother depends on his assistance. He adds that his mother is experiencing a heart murmur, as well as stress, fear, depression, and anxiety due to the possibility that he will depart the United States. He indicates that he does not have family ties in Mexico, as his entire family is in the United States and he has been raised here since the age of 10.

In a statement dated October 30, 2008, the applicant provided that his three siblings and parents are lawful permanent residents, and he has resided in the United States since 1990. He added that his family is close and they rely on each other in times of need. He asserted that he would find himself homeless without anyone to rely on for help should he return to Mexico. He explained that he is openly homosexual and he fears persecution in Mexico as a result.

The applicant submits a letter from a physician for his mother, dated December 9, 2011, that reports that she is being treated for diabetes and obesity. The letter indicates that the applicant's mother was being evaluated for a murmur, but that results were unavailable. The letter notes that the applicant accompanied his mother to an appointment on November 18, 2011. The applicant provided other medical records for his mother from the [redacted] Community Health Center that discuss her treatment for diabetes which began in 2000. The documentation reports that the applicant's sister accompanied his mother to two identified medical appointments, and the applicant accompanied her to one, on November 18, 2011.

Upon review, the applicant has not shown that a qualifying relative will suffer extreme hardship should he reside outside the United States. The applicant asserts that his father is a lawful permanent resident. However, the applicant has not asserted that his father will face hardship should the present waiver application be denied. In the absence of assertions from the applicant, the AAO may not speculate regarding hardships the applicant's family members may face. In proceedings regarding a waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Thus, the applicant has not established that his father will suffer extreme hardship should the applicant be compelled to depart the United States.

The applicant asserts that his mother will suffer hardship related to her health should the applicant no longer be available to assist her. The AAO acknowledges that the applicant's mother faces health problems that require ongoing medical care. However, the record does not support that she, in fact, relies on only the applicant for her medical needs. As noted above, the applicant's sister accompanied his mother to two appointments in 2011, while the applicant accompanied her to one during this period. This fact supports that the applicant's mother receives substantial assistance from the applicant's sister. The applicant has not shown that his mother would lack help from close family members should he depart the United States.

The AAO has carefully examined the medical letter for the applicant's mother. The letter is brief, and does not provide explanation regarding the severity of the applicant's mother's conditions, or the impact they have on her ability to perform common tasks. Nor does the letter described the treatment she requires. The record supports that the applicant's mother takes medications, but it does not appear that her access to medications or health care services depend on the applicant's contribution or presence. The AAO acknowledges the relationship between physical and mental health, and it is evident that the applicant's mother's physical health challenges could impact her psychological difficulty should she be separated from the applicant. However, the record does not support that the applicant's mother is facing unusual emotional difficulty, or that she has a history of mental health challenges that may be exacerbated due to the applicant's departure. The record does not contain a statement from the applicant's mother, and the AAO is unable to ascertain her present emotional state.

The record contains financial documentation for the applicant's parents dated in 1998 and earlier. As approximately 13 years have passed since this evidence was generated, the AAO is unable to give it

weight in assessing the applicant's parents financial circumstances. The applicant has not shown that his mother would face economic consequences should he reside outside the United States.

The applicant has not asserted that his mother would endure difficulties should she relocate to Mexico. As noted above, the AAO may not speculate regarding the applicant's mother's possible experience should she return to Mexico. The applicant has not shown that she would suffer significant hardship there.

All stated elements of hardship to the applicant's mother have been considered in aggregate. Based on the foregoing, the applicant has not established that his mother will suffer extreme hardship, whether she remains in the United States without the applicant or returns to Mexico to maintain family unity. Accordingly, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his mother. Thus, he has not shown that he is eligible for a waiver under sections 212(h) and (i) of the Act. Therefore, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act, the burden of proving eligibility 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.