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



U.S. Citizenship
and Immigration
Services

DATE: OCT 01 2013

OFFICE: WEST PALM BEACH

FILE: [REDACTED]

IN RE: [REDACTED]

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:

SELF-REPRESENTED

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, West Palm Beach, Florida, denied the waiver application and 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 Haiti 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. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his U.S. citizen children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated March 26, 2012.

On appeal, the applicant requests a pardon for the offenses on his record and asserts that he is attempting to assist his daughters in bettering their futures.

In support of the waiver application and appeal, the applicant submitted a letter, identity documents, letters from his daughters, and documentation concerning his criminal record. 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.

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 –
 - (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-
 - (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status.
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [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

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 Eleventh Circuit Court of Appeals, in whose jurisdiction the present case arises, stated in *Fajardo v. U.S. Attorney General*, 659 F.3d 1303, 1305-06 (11th Cir. 2011):

To determine whether a conviction for a particular crime constitutes a conviction of a crime involving moral turpitude, both this Court and the BIA have historically looked to “the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant's particular conduct. (citations and quotations omitted).

The court indicated that where a statutory definition encompasses some criminal conduct that categorically would involve moral turpitude as well as other conduct that would not involve moral turpitude, “[T]he record of conviction—i.e., the charging document, plea, verdict, and sentence—may also be considered. This has been called the modified categorical approach.” *Fajardo v. U.S. Attorney General*, 659 F.3d at 1305-06 (citations omitted).

The record reflects that the applicant pled guilty to dealing in stolen property pursuant to section 812.019(1) of the Florida Statutes in the Circuit Court of the Fifteenth Judicial Circuit of Florida on December 6, 2001. The applicant subsequently pled guilty to the same statute, in the same

court, on July 2, 2003. The judge in both cases withheld adjudication of guilt and placed the applicant on probation. The Field Office Director found the applicant inadmissible for having been convicted of crimes involving moral turpitude. The applicant does not dispute this ground of inadmissibility on appeal, and the AAO finds sufficient support for this finding in the record.

Florida Statute 812.019(1) provides:

Any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen shall be guilty of a felony of the second degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

The AAO notes that courts have found that possessing, transporting, and receiving stolen goods with the knowledge that the goods are stolen is a crime involving moral turpitude. *Michel v. INS*, 206 F.3d 253 (2nd Cir. 2000) (New York Statute involved knowing possession of stolen property, with the intention to benefit himself or a person other than the owner or to impede the recovery by the owner); *Wadman v. INS*, 329 F.2d 812 (9th Cir. 1964); *Matter of A-*, 7 I. & N. Dec. 626 (BIA 1957) (knowledge, as an essential element of the crime, is implied (Article 648, Italian Penal code)); *Matter of De La Nues*, 18 I. & N. Dec. 140 (BIA 1981), § 22-2205 District of Columbia Code; *Accord De Leon-Reynoso v. Ashcroft*, 293 F.3d 633 (3rd Cir. 2002) (receiving stolen property in violation of Pennsylvania statute required subjective belief property was stolen, and therefore, is a crime involving moral turpitude); *U.S. v. Castro*, 26 F.3d 557 (5th Cir. 1994) (receiving stolen autos). *Matter of Fernandez*, 14 I. & N. Dec. 24 (BIA 1972) (transporting forgery securities in interstate commerce in violation of 18 U.S.C. § 2314 held to be a crime involving moral turpitude). See also, *Matter of Acosta*, 14 I. & N. Dec. 338 (BIA 1973) (transporting forgery securities in foreign commerce). Finally, trafficking in counterfeit goods and services had been held to be a crime involving moral turpitude. *Matter of Kochlani*, 24 I. & N. Dec. 128 (BIA 2007).

The AAO notes that Florida courts have found that a necessary element in violating Florida Statutes § 812.019(1) is knowledge at the time of receiving the goods that the goods were stolen, or facts putting a man of ordinary intelligence and caution on inquiry that the goods may be stolen. See *Hart v. State* 92 Fla. 809, 110 So. 253 (1926); *Worster v. State*, 82 Fla. 463, 90 So. 188 (1922). Thus, the AAO finds the applicant's conviction under Florida Statutes § 812.019(1) to be a crime involving moral turpitude.¹

A section 212(h) waiver of the bar to admission resulting from 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 U.S. citizen or lawful permanent resident spouse, parent, or child of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's children. Once extreme hardship is established, it is but one

¹ It is noted that the applicant's arrest record also indicates he was arrested on domestic violence charges with a disposition of adjudication withheld for assault on February 27, 1997. However, the record does not contain conviction records concerning this charge.

favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).²

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

² The applicant has submitted a statement concerning his rehabilitation since his convictions. As provided in section 212(h) of the Act, the application of section 212(a)(2)(A)(i)(I) can be waived if the requirements of section 212(h)(1)(A) are met. The record demonstrates that it is has not been 15 years since the activities for which the applicant is inadmissible so that he is currently ineligible for a waiver under this section.

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.

The record reflects that the applicant is a 46 year-old native and citizen of Haiti. The applicant's older daughter is a 24-year-old native and citizen of the United States. The applicant's younger daughter is a 23-year-old native and citizen of the United States. The applicant is currently residing in West Palm Beach, Florida.

The applicant asserts that he is attempting to assist his daughters, he has always been there for them, and he is needed more than ever. The applicant contends that his older daughter was recently shot. The applicant also contends that his children would worry about him if he had to return to Haiti.

The applicant's older daughter asserts that the applicant used to support her until she became old enough, but that she would not be able to obtain loans for school without him. The applicant's younger daughter asserts that the applicant would have nobody to turn to if he returned to Haiti and that he is needed in the United States.

It is noted that the record does not contain any financial documentation concerning the applicant, including any supporting financial documentation demonstrating that he is assisting his older daughter in obtaining school loans. The record also does not contain any medical documentation concerning the applicant's older daughter or any indication that she requires his assistance for medical purposes.

It is acknowledged that separation from a spouse or child nearly always creates a level of hardship for both parties. However, the applicant has not established that the emotional hardship suffered by his children would go beyond the common results of separation from a close family member due to inadmissibility.

While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is only available in cases of extreme hardship, and not in every case where a qualifying relationship exists.

The applicant asserts that he has not been back to Haiti since the age of 16 and that his two daughters are natives of the United States who have never visited Haiti. The applicant contends that his daughters understand very little of the language and would suffer if they had to live in Haiti under its present conditions. The applicant's daughters similarly contend that they wouldn't even know their way around on a visit to Haiti and would be unsafe. The applicant's older daughter asserts that she is currently a student in college in the United States.

The U.S. Department of State has issued a travel warning concerning Haiti, dated August 13, 2013, stating that Haiti's infrastructure is inadequate and in poor condition, the medical facilities are weak so that some U.S. citizens have been unable to obtain necessary medical care in the country, and U.S. citizens have been the victims of violent crime. In the aggregate, the record contains sufficient evidence to find that the applicant's children would suffer extreme hardship upon relocation to Haiti.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship to a qualifying relative upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen children, as required under section 212(h) of the Act.³ As the applicant has not established

³ It is noted that an assault (domestic violence) conviction could be a crime involving moral turpitude as well as a violent and dangerous crime requiring the applicant to demonstrate extraordinary circumstances or extraordinary and extremely unusual hardship pursuant to 8 C.F.R. § 212.7(d). As noted, the record indicates that the applicant received a disposition with adjudication withheld for this crime, but he has not submitted relevant conviction records. As the AAO finds that the applicant has not shown eligibility for a waiver under section 212(h), it is not making a request for this evidence.

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NON-PRECEDENT DECISION

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extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this 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 proving eligibility remains entirely with the applicant. 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.