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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: FRANKFURT, GERMANY

Date: JAN 02 2008

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer-in-Charge (OIC), Frankfurt, Germany, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Poland who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having committed a crime involving moral turpitude. The applicant has two lawful permanent resident children and he is married to [REDACTED], who is a lawful permanent resident of the United States. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the OIC denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the OIC*, dated January 10, 2006.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(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.

“[M]oral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Padilla v. Gonzales*, 397 F.3d 1016, 1019-21 (7th Cir. 2005), (quoting *In re Ajami*, 22 I. & N. Dec. 949, 950 (BIA 1999)).

The record reflects that from May 26, 2001 to May 30, 2001 the applicant acted jointly and in agreement with another person to misappropriate 32 pieces of concrete slabs valued at zł 1,771.44 from a mine in Katowice. The applicant had been convicted by the Assessor of the Provincial Court of committing an offense under Article 278, section 1 of the Penal Code of Poland, and he was held in custody for 2 days and was ordered to pay a fine. *Certified Translation of Court File Number: III K 1049/01, Penal Order, dated March 14, 2002.*

The applicant’s misappropriation of concrete slabs is a crime of moral turpitude. In *Da Rosa Silva v. INS*, 263 F. Supp. 2d 1005, 1010-12 (E.D. Pa. 2003), a case involving a shoplifting conviction, the court states:

“It is well settled as a matter of law that the crime of larceny is one involving moral turpitude regardless of the value of that which is stolen.” *Quilodran-Brau v. Holland*, 232 F.2d 183, 184 (3d Cir.1956); *see e.g., Zgodda v. Holland*, 184 F.Supp. 847, 850 (E.D.Pa.1960)(larceny of small sum of money and personal apparel during Nazi regime in Germany involves moral turpitude); *Tillinghast v. Edmead*, 31 F.2d 81 (1st Cir.1929)(larceny of fifteen dollars involves moral turpitude); *Wilson v. Carr*, 41 F.2d 704 (9th Cir.1930)(petit larceny involves moral turpitude); *Pino v. Nicolls*, 215 F.2d 237 (1st Cir.1954)(larceny of dozen golf balls involves moral turpitude), reversed on other grounds, *Pino v. Landon*, 349 U.S. 901, 75 S.Ct. 576, 99 L.Ed. 1239 (1955); *United States ex rel. Ventura v. Shaughnessy*, 219 F.2d 249 (2d Cir.1955)(larceny of two sacks of cornmeal involves moral turpitude); *see also, Wong v. INS*,

980 F.2d 721, 1992 WL 358913, at \*5, n. 5 (1st Cir.1992)(citing cases finding that a shoplifting offense is a crime involving moral turpitude). Under these interpretations, the crime of shoplifting is a larceny that involves moral turpitude.

*Id.* at 1010-12

Based on the evidence in the record and the well-settled finding by courts that larceny qualifies as a crime of moral turpitude, the AAO finds that the applicant's misappropriation of concrete slabs is a crime of moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i).

The petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act is not applicable if the maximum penalty possible of the crime of which the applicant was convicted exceeded imprisonment for one year. No evidence in the record indicates that the offense of which the applicant was convicted of qualifies for the petty offense exception.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

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) . . . of subsection (a)(2) . . . if -

...

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from 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. The waiver application indicates that [redacted] qualifying relatives are his wife and son and daughter. 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 meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains letters, the Application for Immigrant Visa and Alien Registration, and other documents.

The letter dated January 19, 2006 from the applicant states that the applicant has been married since 1985 to his wife and that they have two children who are 19 and 16 years old. He states that since 1992 they have been running their own business in Poland, which provided a comfortable living.

In the August 25, 2005 letter, [REDACTED] states that she won the 2005 Visa Lottery and entered the United States with her two children, who are in school. She states that she is supporting them by working two jobs, and that she must learn English and enter job training. She states that she and her children do not have medical insurance and that as a single parent with young children she will not be able to afford medical insurance or buy a house. She states that her life will be destroyed without her husband and that separation from him will cost her and her children psychological pain and depression. She states that she consulted with a family practitioner about depression and that she was told to take it easy for a while. [REDACTED] states that she has lost her appetite and that her children are affected by the situation. She states that she has no chance of earning her husband's potential earnings, that health care is an issue for her and her children and that as a helper and a janitor she has no chance of having a health care plan or insurance. She states that she does not know how she will pay for her children's tuition, as she earns slightly more than minimum wage. She states that she has a degree in nursing and would love to become a registered nurse but cannot achieve this without her husband. She states that she is active in her community, church, and neighborhood.

The applicant fails to establish that his wife and son and daughter would experience extreme hardship if they remained in the United States without him.

[REDACTED] claims that without her husband she cannot buy a house and is not able to afford health care and tuition for her children. However, the record contains no documentation in support of [REDACTED]'s claim, such as her monthly earnings and household expenses. Thus, the AAO cannot assess whether the applicant's

income is needed to meet the family's household expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Regarding family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families. In *Banks v. INS*, 594 F.2d 760, 763 (9th Cir. 1979) the court found that separation of a mother from a grown son who elects to live in another country is not extreme hardship. In *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA's finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child."

The record reflects that [REDACTED] is very concerned about separation from her husband and its impact on their son and daughter, who are now 20 and 18 years old. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED] and her son and daughter, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be experienced by the applicant's wife and son and daughter, is unusual or beyond that which is normally to be expected upon removal. See *Hassan*, *Shooshtary*, *Perez*, *Sullivan*, *Banks*, and *Dill*, *supra*.

The applicant fails to establish that his wife and son and daughter would experience extreme hardship if they joined him in Poland.

The applicant makes no hardship claim if his family were to join him in Poland. It is noted that in the January 19, 2006 letter, the applicant indicates that his family lived comfortably there.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act, 8 U.S.C. § 1182(h).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.