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U.S. Citizenship
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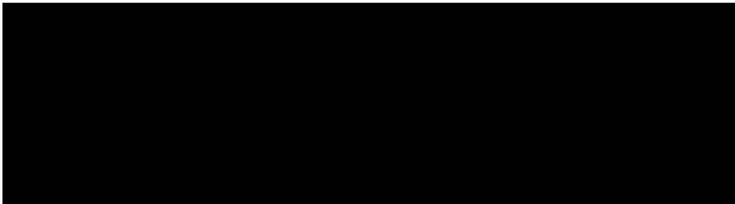
Date: JUL 11 2008

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:



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 District Director, Los Angeles, California, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained.

The applicant is a native and citizen of Egypt who was found 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 committing a crime of moral turpitude. The applicant, who is married to a U.S. citizen, sought a waiver of inadmissibility under section 212(h) of the Act, which the district director denied, finding that the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director, dated August 12, 2005.* The applicant submitted a timely appeal.

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.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The record reflects that in the Superior Court of California in the County of Los Angeles the applicant was convicted of grand theft, property over \$400 on April 10, 2000, and was sentenced to 3 years of probation, 60 days in jail, and payment of restitution. In 2001, he pled *nolo contendere* to petty theft with a prior, and was sentenced to 3 years of probation, 10 days in jail, payment of restitution, and to stay away from Jan’s Market. In 2003, the applicant pled *nolo contendere* to misdemeanor make/pass fictitious check. He was sentenced to 2 years of probation, 1 day in jail, and payment of restitution, and to stay away from Los Angeles Valley College.

The AAO finds that the applicant’s theft offenses involve moral turpitude. In *U.S. v. Esparza-Ponce*, 193 F.3d 1133 (9th Cir. 1999), petty theft was found to involve moral turpitude.

The applicant was convicted of make/pass fictitious check. Because passing a bad check involves moral turpitude, making/passing a fictitious check would likewise be morally turpitudinous. *See, e.g., Matter of Zangwill*, 18 I&N Dec. 22, 28 (BIA 1981), and *Matter of Balao*, 20 I&N Dec. 440 (BIA 1992).

Thus, the record establishes that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for committing a crime of moral turpitude.

The AAO will now consider whether granting the applicant's section 212(h) waiver is 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 record reveals that the applicant's qualifying relative is his U.S. citizen spouse. 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *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 applicant’s qualifying relative must be established in the event that the qualifying relative joins the applicant, and in the alternative, that the qualifying relative remains in the United States without the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In her September 10, 2005 letter, the applicant’s mother-in-law states that her daughter, who is the applicant’s spouse, suffered from occasional periods of severe depression and emotional upset during her early twenties and prior to marrying the applicant. She states that in 2003, her daughter felt suicidal and was admitted for treatment for one week at a mental health facility. She states that her daughter is a happier and more stable person since marrying the applicant and would be devastated if he were forced to leave the United States.

In her September 11, 2005 letter, the applicant’s spouse states that if she accompanies her husband to Egypt she, as an American, will be blown up by terrorists; and if she remains in the United States without her husband, she will suffer extreme and unbearable hardship. She states that she has hypo-manic depressive disorder and was admitted into a mental hospital in 2003 because of suicidal thoughts. She states that she met her husband in April 2004, and since then has had a stable and secure life. She conveys that when she thinks of separation from him depressive and suicidal thoughts haunt her. The applicant’s spouse indicates that her husband attends to her whenever she feels anxious or depressed and his presence has provided the emotional stability where the doctors and medication failed. She states that if he were taken away from her, she would not survive that pain and would want to take her life.

In his letter dated September 11, 2005, the applicant discusses his convictions. He indicates that his wife no longer suffers from depression and suicidal thoughts since their marriage. He states that he has not taken his wife to visit his family in Egypt because they have received threats on account of having a son in the United States, and because of the terrorist attacks there. He states that his wife cannot leave the United States because she is caring for her sister who could die at any time, she does not speak Arabic, she will have a difficult time adapting to Egypt’s culture and traditions, and she and he will not find employment there.

In her letter dated September 15, 2005, the applicant’s wife indicates that her sister has been diagnosed with aplastic anemia and had a bone marrow transplant, but has had medical setbacks.

The undated letter by the applicant is similar in content to his letter dated September 11, 2005.

The psychiatric admission note reveals that the applicant’s spouse was admitted to a medical center for depression and suicidal thoughts on April 27, 2003. The notes indicate that the applicant’s spouse made a

suicidal attempt in the past with an overdose, and has a history of depression. She was diagnosed with the following:

Axis I. Bipolar disorder, type-II, depressed with suicidal ideation.

Axis II. Deferred.

Axis III. Deferred

Axis IV. Number three moderate to number four, severe.

Axis V. GAF: 35 to 40.

She was admitted to the medical facility and prescribed medication.

The record contains four news articles about violence in Egypt. It also contains the applicant's and his wife's employment letters.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The record establishes that the applicant's spouse would experience extreme hardship if she were to remain in the United States without the applicant.

With regard to 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).

The record reveals that the applicant's wife has had a history of depression, and was hospitalized and diagnosed with bipolar disorder, type-II, depressed with suicidal ideation. It shows that she made suicidal attempts in the past and that she has been a more stable person since her marriage. After a careful and thoughtful consideration of the record, the AAO finds that the applicant's wife would experience emotional hardship that is unusual or beyond that which is normally to be expected upon removal if she remains in the United States without the applicant. Thus, the applicant has established that his wife would experience extreme emotional hardship if she were to remain in the United States without him.

The AAO finds that the record establishes that the applicant's wife would experience extreme hardship if she were to join the applicant to live in Egypt.

The applicant indicates that as an American his wife's life will be in jeopardy in Egypt. The submitted news articles about Egypt describe bombings and violence that is directed towards tourists. He states that his wife does not speak the Arabic language and will have a difficult time adapting to its culture and traditions. The record conveys that the applicant's wife has a history of bi-polar disorder that is related to stress. The AAO finds that the applicant's wife mental disorder, unfamiliarity with the Arabic language, and fear of violence in

Egypt, considered cumulatively, establish that she would experience extreme emotional hardship adjusting to life in Egypt.

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.

The applicant has established that his wife would experience extreme hardship if she were to remain in the United States without him, and in the alternative, if she were to join him in Egypt. The requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship in the event that the applicant's wife were to join him to live in Egypt. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do 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).

The AAO also finds that the applicant merits granting the waiver as a matter of discretion.

The positive factors include his U.S. Citizen spouse and the extreme hardship she would experience, an approved relative petition, stable work history and letters of recommendation.

The negative factors are his criminal convictions.

The AAO finds that the crimes committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.