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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: WASHINGTON, DC Date: JUL 06 2011

IN RE: Applicant: [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:

[redacted]

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, Washington, District of Columbia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Morocco. The director stated that the applicant was inadmissible under 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 a crime involving moral turpitude. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant demonstrated extreme hardship to his wife. Counsel contends that the director dismisses the hardship that the applicant's wife will suffer in Morocco by stating that the U.S. Department of State indicates the Jewish community in Casablanca is allowed to worship and pursue its activities, and that amicable relations exist between different religions. Counsel argues that the applicant's wife will experience extreme hardship in Morocco in view of the U.S. Department of State advisories about Americans traveling and living in Morocco. Further, counsel contends that the applicant's wife will experience verbal harassment by men because she is a woman, that she will be targeted unfavorably because she is an American, and that she will endure religious and societal discrimination because she is Jewish. Lastly, counsel maintains that the applicant's wife is deeply attached to her Jewish identity, and has always lived in the United States, where all of her family ties are. Counsel asserts that the applicant's wife speaks no foreign language, and will not be able to either pursue her career in the online educational industry in Morocco or obtain any employment in Morocco. Counsel indicates the applicant's wife is emotionally dependent on her husband.

We will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing a crime involving moral turpitude.

The record reflects that on June 12, 1999, the applicant was arrested of felony concealing or taking possession of merchandise in violation of 18.2-103 of the Code of Virginia. On August 11, 1999, the judge reduced the charge to a misdemeanor and convicted the applicant of the offense. The applicant was sentenced to serve 360 days in jail of which 350 days were suspended.

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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> . . . .

> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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.)

Section 18.2-103 of the Virginia Code, which is the provision under which the applicant was convicted, states that:

> Whoever, without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of the goods or merchandise, (i) willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment, or (ii) alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another, or (iii) counsels, assists, aids or abets another in the performance of any of the above acts, when the value of the goods or merchandise involved in the offense is less than $200, shall be guilty of petit larceny and, when the value of the goods or merchandise involved in the offense is $200 or more, shall be guilty of grand larceny. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise.

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.

The AAO finds that concealing or taking possession of merchandise in violation of 18.2-103 of the Code of Virginia, which in essence is retail theft, involves moral turpitude. In *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently.

Furthermore, altering price tags or other price marking on goods or merchandise, or transferring the goods from one container to another, or counseling, assisting, aiding or abetting another in the performance of any of such acts involves moral turpitude in view of *Jordan v. DeGeorge,* 341 U.S. 223, 232 (1951), wherein the U.S. Supreme Court stated that "[t]he phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct."

In consideration of the foregoing, the applicant's conviction under 18.2-103 of the Code of Virginia constitutes a crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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 Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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 qualifying relative in this case is the applicant's fiancé. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 *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 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.

In rendering this decision, the AAO will consider all of the evidence in the record including information by the U.S. Department of State, a report by [redacted] a personal statement, information about child abuse, and other documentation.

Counsel asserts that the applicant's wife will suffer hardship in Morocco because she is a woman and is Jewish. In support of his assertions, counsel cites public announcements by the Consulate General of the United States. The announcement dated April 14, 2007 discusses bombings in Casablanca, and states that "[t]he potential for violence against American interests and citizens and other Western targets remains high in Morocco." Establishments such as clubs, restaurants, and places of worship are identified as potential targets for attack. The announcement dated November 9, 2007 conveys that "terrorist groups seek to continue attacks against U.S. interests in the Middle East and North Africa," and that "terrorists do not distinguish between official and civilian targets." In "certain areas of cities and rural areas," to avoid harassment, women are advised not to walk alone. U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information – 2007: Morocco*, 2 (August 20, 2008). We note that "[t]he Moroccan government does not interfere with public worship by the country's Jewish minority or by expatriate Christians. Proselytizing is, however, prohibited." *Id.* at 4

[redacted] states in the report dated April 6, 2007 that the applicant's wife intends to follow her husband to Morocco, and that she will have difficulties there because the applicant's wife identifies closely with her Jewish faith. [redacted] conveys that the applicant indicated that his mother had to obtain a Moroccan birth certificate using false documentation because she is Jewish. [redacted] avers that the applicant's wife will have the same problem. He states that their marriage will not be recognized because she is Jewish and their marriage was performed in the United States, and that they cannot be married in the Moroccan Embassy because the applicant's wife is not Moroccan. [redacted] declares that the applicant's wife will never have the benefits of Moroccan citizenship, that she has never lived in Morocco and has no connection to its culture, and that she does not speak the language that is spoken there. [redacted], citing the U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2005: Morocco*, 1 (March 8, 2006), states that there is a small Jewish community in Casablanca and Rabat and that 99 percent of the citizens in Morocco are Sunni Muslims. [redacted] conveys that the applicant left the Muslim faith, which will alienate him in Morocco according to the U.S.

Department of State. *Id.* at 2-3. Further, he states that the applicant's wife will have difficulties integrating in Morocco because she is American and is Jewish. [redacted] asserts that the applicant's wife will lose her standard of living and may not be able to work in Morocco. He contends that she will lose the benefits of health care and educational opportunities for herself and her children, and will be separated from her family members in the United States. [redacted] indicates that the applicant has two siblings living in Morocco, a 37-year-old brother who is employed as a school principal and a 34-year-old sister who is employed by the French government as a general director of a local school.

The asserted hardship factors to the applicant's spouse case are apprehension that her personal safety is at risk due to her U.S. citizenship, restrictions on practicing her Jewish faith, reduced educational opportunities and healthcare, confronting a language barrier that will affect her ability to obtain a job, facing discrimination as both a woman and a Jew, and separation from family members.

Even though we agree that the applicant's wife's will be significantly limited in her ability to communicate in Morocco, the applicant has not provided any documentation to show that he will be unable to obtain a job which will provide a sufficient income to support them. We also note that the applicant and his wife have family ties in Morocco, as the applicant's brother and sister, who live in the capital Rabat, hold positions as a school principal and a general director in the teaching industry.

Moreover, the concern about health care and the educational system in Morocco has not been fully substantiated by documentation, which is needed to represent that the health care and educational opportunities in Morocco that the applicant's wife will have access to will be substantially inferior to what she now has in the United States. The U.S. Department of State conveys in its country report that there is adequate medical care in Morocco's largest cities, although not all facilities meet high-quality standards. *Id.* at 4. We take note that though the U.S. Department of State reports that "[s]pecialized care or treatment may not be available," no medical records have been provided to show that the applicant's wife has need of such care or treatment. We observe that the submitted documentation does not describe the living standard in Morocco. Thus, the applicant has not established that for his wife the standard of living in Morocco will be lower than what she now has in the United States.

In addition, the documentation does not adequately demonstrate that the applicant's spouse will be legally and socially discriminated against because of her gender, citizenship, and Jewish religion. For example, even though a woman walking alone "in certain areas of cities and rural areas" may receive harassment from men, such conduct, occurring in specific locales, is not sufficient to establish pervasive gender discrimination. Furthermore, the country report on Morocco states that public worship by the Jewish minority and expatriate Christians is not interfered with by the Moroccan government, and that "the constitution provides for the freedom to practice one's religion." *Id.* at 4. The applicant does not indicate that his wife proselytizes or that this is an imperative of her religious faith. We note tha[redacted] provides no documentation in support of his claims about social conditions and legal matters, such as the applicant and his wife's marriage not being legally recognized in Morocco and her inability to acquire legal status, including Moroccan citizenship should she desire.

Even though the AAO recognizes that the country report on Morocco describes terrorist bombings in

March and April 2007 in Casablanca, and states the importance "for American citizens to be keenly aware of their surroundings and adhere to prudent security practices such as avoiding predictable travel patterns and maintaining a low profile," *id.* at 1, we find that such occurrences and precautions are not enough to fully demonstrate that the applicant's wife will be targeted as a victim of terrorism, especially in view of the country report for 2005 cited by [redacted], which indicates that the Jewish community lives in safety in Morocco, and conveys the following:

> There were no reports of anti-Semitic acts, publications, or incitements to violence or hatred.
>
> Representatives of the Jewish minority, estimated by community leaders to number approximately about four thousand, generally lived in safety throughout the country. The Jewish community operated a number of schools and hospitals whose services were available to all citizens. The government provided funds for religious instruction to the small parallel system of Jewish public schools. Jews continued to hold services in synagogues throughout the country.

Id. at 7.

Finally, with regard to the separation of the applicant's wife from her family members in the United States, in view of the record, we find that the applicant's wife's hardship is not extreme. Though the AAO acknowledges that the applicant's wife will experience the hardship of separation from her mother and sibling and extended family members in the United States, the record shows the applicant's 36-year-old wife as living a full and independent life from her family: she has graduated from college, secured employment, and is now trying to become pregnant.

With regard to separation from her husband, counsel indicates that the applicant's wife is emotionally dependent on her husband, and has always lived in the United States. The applicant's wife conveys in the brief letter dated April 2, 2007 that she has a close relationship with her husband, who she met in June 2004 and married in September 2005. She indicates that she "can't imagine or even try to picture my life today without him," and that in January 2007 they made the decision to try to have a family together. Though we recognize that separation of spouses from each other is a significant factor in the hardship analysis, we find that the applicant's wife has not fully described or demonstrated how any hardship that she will experience if she remains in the United States without her husband goes beyond the typical or common hardship.

Thus, when all of the foregoing hardship factors are combined, they fail to establish extreme hardship to a qualifying relative for relief under section 212(h) of the Act. 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 sections 212(h) and 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

ORDER: The appeal is dismissed.