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U.S. Citizenship
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Services

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FILE:

Office: PHOENIX AZ

Date:

SEP 21 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting District Director, Phoenix, Arizona, 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 Mexico 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 is married to [REDACTED], a lawful permanent resident; and she indicates that her daughter is a lawful permanent resident. The applicant 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 to a qualifying relative. *Decision of the District Director*, dated October 26, 2005.

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)).

In the appeal brief, counsel asserts that the applicant is not inadmissible for having committed a crime of moral turpitude. Counsel contends that the applicant has, at most, only one conviction for shoplifting on January 27, 1998, which makes her eligible for the exception under section 212(a)(2)(A)(ii) of the Act. Counsel states that *Pazcoguin v. Radcliffe*, 292 F.3d 1209, 1218 (9th Cir. 2002)(citing *Matter of K*, 7 I&N Dec. 594, 596-598 (BIA 1957), indicates that admissions of criminal conduct by an alien to an immigration inspector cannot be used for application of section 212(a)(2)(A)(i) where the immigration inspector fails to provide the alien with “a definition and the essential elements of the crime.” Counsel asserts that the applicant’s admission of arrest and conviction for shoplifting on January 27, 1998 is not valid since she was not provided with a definition and the essential elements of shoplifting. Counsel states that the applicant’s admission of arrest on February 18, 1997 for shoplifting and the director’s statement that the applicant had been arrested on June 22, 1989 for shoplifting are not convictions, as required by the Act.

The AAO finds unpersuasive counsel’s contention that the applicant is not inadmissible under section 212(a)(2)(A) of the Act.

The record reflects that the applicant was convicted of two separate incidents of shoplifting, on February 18, 1997 and January 27, 1998, and had sentences imposed of 20 days in jail and two years of probation for each

conviction. *U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Clarksburg, WV.*

“Shoplifting” is defined in Black's Law Dictionary as “[l]arceny of merchandise from a store or business establishment.” Black's Law Dictionary 1378 (6 ed.1990). The court in *Da Rosa Silva v. INS*, 263 F. Supp. 2d 1005, 1010-12 (E.D. Pa. 2003), held that Silva’s shoplifting conviction was a crime involving moral turpitude. In its decision, 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.

█ has two shoplifting convictions. Based on the court decisions set forth in the above excerpt of █ the AAO finds that the crime of shoplifting is a larceny that involves moral turpitude within the meaning of section 212(a)(2)(A) of the Act. The AAO therefore finds the applicant inadmissible for having convictions for crimes involving moral turpitude.

The petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act is not applicable if more than one crime involving moral turpitude has been committed or admitted. Because █ has more than one conviction for a crime involving moral turpitude, the petty offense exception does not apply.

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:

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 a 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 her husband and her daughter. However, as the record contains no evidence demonstrating that [redacted] daughter is a U.S. citizen or lawful permanent resident, the AAO will consider hardship to her daughter only to the extent that such hardship results in hardship to the qualifying relative, who in this case is [redacted] husband. 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 husband must be established in the event that he joins the applicant; and in the alternative, that he 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.

In the appeal brief, counsel states that due to the applicant’s age, health problems, gender, and lack of skills and education she may not be able to earn enough to support either herself or her spouse. Counsel asserts that the applicant’s husband, who is 69 years old, works in landscaping, earning \$15,000 per year. He states that

the applicant's husband will live in poverty and will be without the applicant's emotional companionship, which he has had for 45 years, if she leaves the country. Counsel states that the AAO should take administrative notice of Mexico's economic conditions since so many Mexican citizens come to the United States for employment, it is probable that in Mexico the applicant and her husband would earn significantly less than the minimum wage in the United States. Counsel states that in Mexico the applicant will not have the standard of living that she is accustomed to in the United States.

The record contains income tax records; wage statements; W-2 Forms; letters; a marriage certificate (reflects applicant and her husband have been married for 37 years); birth certificates; employment verification letters; bank statements; health insurance information; an assessment by ██████████ MA, LISAC; and other documents.

The record is sufficient to establish that ██████████ would endure extreme hardship if he joined his wife in Mexico.

The conditions in Mexico, the country where ██████████ would live if he joins his wife, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

Counsel states that due to the applicant's age, health problems, gender, and lack of skills and education she may not be able to earn enough to support either herself or her spouse. With regard to finding employment in Mexico, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" ██████████ claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57." The alien in *Carrete-Michel* was a "relatively poor, uneducated, unskilled laborer who had been in the United States for eleven years."

Here, ██████████ wage statement for 2003 reflects that he earned \$7.60 per hour. He is employed in landscaping, is 69 years old, and he states that he has lived in the United States for 20 years. The applicant, who is 63 years old, earns \$7.05 per hour as a room attendant. In light of his age and employment history, as demonstrated by the record, the AAO finds that ██████████ would endure extreme hardship in seeking to find employment in Mexico; and that the applicant, given her age and employment record, would not be able to find employment to sustain herself and her husband.

The record, however, fails to establish that the applicant's husband would endure extreme hardship if he remained in the United States without his wife.

Counsel asserts that the applicant's income is required to meet the family's household expenses, and Mr. ██████████ states that his wife helps him with expenses as he is "over the retirement age." The most

current information in the record of [REDACTED] earnings is the wage statement for 2003, which indicates he earned \$7.60 per hour. *Paradise Valley Country Club Wage Statements*. The employment letter from Hilton Phoenix Airport reveals that [REDACTED] earns \$7.05 per hour as a room attendant. However, since there is no documentation in the record of the family's household expenses, the AAO cannot determine whether the applicant's earnings are 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)).

The AAO notes that the undated letter from [REDACTED] indicates that the applicant and her husband have seven adult children. There is no documentation in the record that shows that the applicant's adult children hold legal status in the United States.

Regarding family separation, the record contains an assessment by [REDACTED] MA, LISAC, which indicates that [REDACTED] meets the criteria for Dysthmic Disorder, Nightmare Disorder, Avoidant Personality Disorder, and Acute Stress Disorder. [REDACTED] assessment of [REDACTED] daughter relies upon a report by [REDACTED] that found [REDACTED] to have Adjustment Disorder with Mixed Anxiety and Depressed Mood, Acute Stress Disorder, and R/O Panic Disorder without Agoraphobia.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment of [REDACTED] is based on a single interview between [REDACTED] and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and [REDACTED] or any history of treatment for the disorders experienced by Mr. [REDACTED]. Moreover, the conclusions reached in the submitted assessment, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the assessment's value to a determination of extreme hardship.

The AAO finds the assessment of [REDACTED] by [REDACTED] (referenced in Ms. [REDACTED]) speculative, as [REDACTED] had only two meetings with [REDACTED]. Furthermore, the AAO notes that the report prepared by [REDACTED] is not in the record.

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 *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shoostary'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." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). 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.

The record reflects that [REDACTED] is very concerned about separation from his wife. It shows that he is 69 years old and has been married to the applicant for 37 years. 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] if he remains 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 endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See [REDACTED] and [REDACTED]

The applicant and her family members indicate that the applicant has diabetes and high blood pressure for which she takes medication. The applicant is not a qualifying relative under the statute, and she has not established how her health problems would result in extreme hardship to her husband.

The May 19, 2005 letter from the applicant's husband indicates that he "suffered from lung disease," and the applicant takes care of him when he needs assistance. There is no documentation in the record showing that [REDACTED] has lung disease and that it is of such a nature as to require regular assistance by the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

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.

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.