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[REDACTED]

FILE:

Office: BALTIMORE, MARYLAND

Date: APR 09 2008

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:

[REDACTED]

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 District Director, Baltimore, Maryland, 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 is a native and citizen of Kuwait who was found to be inadmissible and ineligible for a waiver of inadmissibility for having committed an aggravated felony. 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 eligibility for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h). *Decision of the District Director, dated December 16, 2004.* The applicant submitted a timely appeal.

It is noted that the district director erred in finding that because the applicant was convicted of a theft offense, and did not prove that the crime was not an aggravated felony, that the applicant was not eligible for a waiver of inadmissibility under section 212(h) of the Act. Whether a crime is an aggravated felony is not relevant when examining inadmissibility under section 212(a)(2)(A)(i) of the Act. The issue to be determined is whether the applicant was convicted of a crime involving moral turpitude (CIMT).

The AAO will first address whether the applicant is inadmissible for the theft offense.

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 applicant’s waiver applicant states that the applicant was convicted of a theft offense, and Citizenship and Immigration Records (CIS) indicate that the theft was committed in 1999. Documentation in the record indicates that the court granted the applicant probation.

Counsel claims that a waiver is not required. Counsel states that a waiver is not required because the conviction was overturned for other than ameliorative reasons. *Counsel’s letter dated September 20, 2006.* In

an earlier letter, counsel asserts that the applicant's underlying criminal matter was dismissed. *Counsel's letter dated September 23, 2003*. However, the AAO finds that no documentation in the record establishes that the conviction was overturned or dismissed. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Furthermore, it is noted that the record shows that counsel failed to submit, after repeated requests by CIS, the court disposition of the applicant's conviction. *Letter from the District Director Regarding Application to Register Permanent Residence, Form I-485, dated December 15, 2004*.

Based on the documentation in the record, the AAO finds the applicant was convicted of grand theft/shoplifting over \$300.

"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 [REDACTED]'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 (9thCir.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 court decisions set forth in the above excerpt of *Da Rosa Silva*, the AAO finds that the crime of grand theft/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 been convicted of a crime of moral turpitude.

The AAO will now consider whether the applicant is eligible to apply for a section 212(h) waiver, and if she is, whether she established extreme hardship to a qualifying relative, as required by the Act.

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 relatives are her husband and mother, who are lawful permanent residents. 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 or mother must be established in the event that he or she joins the applicant, and in the alternative, that he or she remains in the

United States without her. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In his affidavit, which was sworn and subscribed on April 11, 2002, the applicant's husband states that he is 40 years old, and that he and his wife would be separated in two different countries if the waiver is denied. He states that if he returned to Syria, a repressive country, he would have to serve in the military for 2 ½ years and be paid the equivalent of \$20 U.S. a month. He states that his wife would not be able to support them during this period of time, and that he is unsure about obtaining employment after his military term. He states that the average income is approximately \$100 a month, which is not enough to live on. The applicant's husband states that he has nothing in Syria, not even a house. He indicates that because the United States claims that Syria supports terrorism, Syrians would be suspicious of him as he lived in the United States for over 10 years. The applicant's husband states that his desire to have children and his own business and to educate his wife and children are on hold until he knows his wife can stay in the United States. He states that his wife cares for his mother-in-law, who lives in the same building as them. He states that his mother-in-law needs at least three to four hours of his wife's time every day and that his wife assists her mother in standing and walking. He states that his mother-in-law is beginning to suffer from Alzheimer's disease and is diabetic, and that his wife tests her blood sugar every two days and makes sure that she takes medicine. He states that is why they live in the same building.

The August 5, 2005 letter by the applicant's husband is similar in content to the preceding affidavit. In addition, he states that he, his wife, and his wife's brother care for his mother-in-law, who receives better health care in the United States. He states that he supports his mother, who lives in Syria, and that he has two sisters and a brother in Syria.

The letter by the applicant's brother, [REDACTED], conveys that he, his sister, and the applicant are caring for their mother who is 80 years old and wheelchair bound. He states that he cannot care for his mother on his own and needs the applicant's help. He states that the applicant follows up on their mother's health, making sure she takes her medicine and testing her blood sugar at least once a day. He states that if the applicant and her husband were not living in the same building it would have been harder for him and his mother.

The employment letter by [REDACTED], the franchisee of 7-Eleven and the applicant's brother, states that the applicant has been working as a store manager at 7-Eleven for two years.

The August 10, 1999 letter by [REDACTED], the applicant's brother, conveys that the applicant's husband is employed as a full-time night manager, earning \$25,700 annually.

The record contains documentation relating to the applicant's nephew, who has a chronic blood disease.

The Permanent Resident Card reveals that the applicant's mother is 88 years old.

The Application to Register Permanent Residence or Adjust Status shows that the applicant's husband was born in Syria.

The April 9, 2002 letter by [REDACTED] M.D., conveys that the applicant's mother has chronic illnesses including mild dementia, and hypertension and diabetes, which require continuous care. He states that the applicant's mother "is unable to ambulate without assistance," and it is noted that although the letter is typed, "due to severe osteoporosis" is added in handwriting to explain why the applicant's mother is unable to ambulate. It is noted that no further documentation regarding the applicant's mother's medical condition was submitted on appeal, over three years after the letter from [REDACTED] was written.

The Biographic Information reflects that the applicant lived in Damascus, Syria from 1978 to May 1998, which is immediately prior to her move to the United States. It shows that she was a mechanical engineer from 1985 to 1998 in Damascus, Syria, with Al Thawra Newspaper.

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

The applicant has failed to establish that her mother or husband would experience extreme hardship if she or he were to remain in the United States without her.

The applicant's husband and brother assert that the applicant is needed to care for her mother. The doctor's letter conveys that the applicant's mother has mild dementia, hypertension, and diabetes, and is unable to ambulate without assistance. However, no medical records of the applicant's mother conditions have been submitted to show that the severity of her conditions requires her to have someone help her ambulate, take medication, and test blood sugar. Furthermore, the record shows that the applicant is limited in caring for her mother as she is employed at her brother's store. No explanation or documentation has been provided to show why the applicant's brother and husband (who also works for the applicant's brother) are unable to care for her mother.

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 conveys that the applicant's husband is concerned about separation from his wife and her separation from her mother. However, courts in the United States have held that separation from one's family need not constitute extreme hardship. For instance, 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 *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir. 1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance), and in *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985) (affirming BIA's decision in 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 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 the applicant's mother and husband 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 required 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 mother and husband, is unusual or beyond that which is normally to be expected upon removal. *See Sullivan, Guadarrama-Rogel and Dill, supra.*

The AAO finds that the record fails to establish that the applicant's husband or mother would experience extreme hardship if he or she were to join the applicant to live in Syria.

The conditions in Syria, the country where the applicant's husband would join 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).

Without medical records, the record fails to establish that the applicant's mother has severe health problems. Although the applicant's husband states that his mother-in-law receives better health care in the United States, "second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984).

No documentation has been provided to support the claim that the applicant's husband would be required to serve in the Syrian military for two and a half years. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 applicant's husband asserts that he will be unable to find employment in Syria, but no documentation has been provided to support this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, Id.*

In addition, although economic detriment is a factor to consider when determining extreme hardship, *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), economic hardship claims of not finding employment were found not to reach the level of extreme hardship in *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985), *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9<sup>th</sup> Cir. 1980), *Pelaez v. INS*, 513 F.2d 303 (5<sup>th</sup> Cir. 1975), *Bueno-Carrillo v. Landon*, 682 F.2d 143 (7th Cir. 1982), and *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996).

The applicant's husband indicates that he would be under suspicion if he lived in Syria. No documentation has been submitted to show that the applicant's husband would be mistreated or harmed if he were to live in Syria. *Matter of Soffici, Id.* "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciamba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted).

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 212(h) of the Act, 8 U.S.C. § 1182(h).

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.