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U.S. Citizenship
and Immigration
Services

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FILE:

Office: FRANKFURT, GERMANY

Date: JAN 23 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 the Czech Republic 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], who is a naturalized citizen 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 February 15, 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 the applicant was found guilty of committing a theft on April 23, 2003 for going into the checkout without paying for two deodorants; of committing a theft and burglary on October 5, 2002 for stealing money and damaging property; and of illegally obtaining a password and pin code to a business bank account and withdrawing money from that account in 2002.

The applicant’s crimes involve 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 (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 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 criminal convictions qualify as crimes of moral turpitude, rendering her inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i).

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 the applicant's qualifying relative is her 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).

"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 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.

In the letter dated March 3, 2006, the applicant states that she loves her husband even though they have been separated for over a year. She states that they call each other every day and send photos to each other. She states that their dream is to create a family, but they must be together to do this. She states that she has paid for her faults and not being with her husband is a disproportionate penalty. She indicates that she is a person of integrity according to the rules of the Czech Republic. She states that her husband is everything to her.

In undated letters, the applicant’s husband, [REDACTED] states that he escaped from Communist Czechoslovakia. He states that he met his wife in 2004 and wants to have a family with her, but cannot raise his children if his wife is at the other end of the world. He states that his wife’s application was denied because she was suspected of having a mental illness and tuberculosis. [REDACTED] states that his life would be destroyed if his wife were not with him. He conveys that he is aware of his wife’s past and that nobody is perfect. He states that while in Europe he lives with his wife and that he visited her four times in one year.

The applicant fails to establish that her husband would experience extreme hardship if he remained in the United States without her.

indicates that his life would be destroyed if he were separated from his wife. 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.

The record reflects that [REDACTED] is very concerned about separation from his wife. 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 experienced by the applicant’s husband, is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

The applicant fails to establish that her husband would experience extreme hardship if he joined her in the Czech Republic.

The applicant makes no hardship claim if her husband were to join her in the Czech Republic.

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 she 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.