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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] Office: LOS ANGELES Date: **JUL 25 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, 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 dismissed.

The applicant, [REDACTED] is a native and citizen of Israel who was found 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 committing a crime of moral turpitude. 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 February 17, 2005.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states 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 on May 15, 1996 the applicant was charged with and found guilty by a jury, of disorderly conduct, lewd act, in the County of Los Angeles, California. The judge suspended the imposition of his sentence and placed the applicant on summary probation for 24 months. On April 27, 1995, the applicant was charged with petty theft with a prior in the County of Los Angeles, California. He pled *nolo contendere* to the charge and the judge found him guilty and suspended the imposition of his sentence and placed the applicant on summary probation for 36 months. On December 15, 1993, the applicant was charged with misdemeanor theft of property in the County of Los Angeles, California; he pled guilty to the charge and was convicted. The judge suspended the imposition of the applicant's sentence and placed him on summary probation for 12 months.

The applicant's convictions for theft involve moral turpitude. Petty theft under California law is a crime of moral turpitude. See *U.S. v. Esparza-Ponce*, 193 F.3d 1133 (9th Cir. 1999). Because the applicant's theft convictions involve moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i) of the Act, 8

U.S.C. § 1182(a)(2)(A)(i), the AAO need not determine whether the conviction for disorderly conduct, lewd act, involves moral turpitude.

The AAO will now discuss the waiver of inadmissibility under section 212(h) of 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 applicant's qualifying relative is his naturalized citizen mother, as shown by the certificate of naturalization. It is noted that no documentation has been provided to establish that the applicant's father is a lawful permanent resident of the United States. Consequently, in rendering this decision the AAO will consider only extreme hardship to the applicant's mother. 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).

The record contains psychological evaluations, letters, and a divorce certificate, a birth certificate, and other documents.

The undated letter by [REDACTED] stated that the applicant’s mother has been under his care since April 12, 2007 and that she has been recently diagnosed with left breast infiltrating tubular carcinoma and that she underwent surgery on April 20, 2007 to remove the tumor. He stated that she will need further surgery to remove additional lymph nodes and will require radiation treatment for at least six weeks. He stated that her condition will require special needs that her son will provide, including moral and physical support.

The psychological evaluations performed by [REDACTED] of the applicant and his mother conveyed that the applicant and his mother have a close relationship. In her evaluation, the applicant’s mother stated that the applicant takes her to medical appointments, shopping, and the movies; visits with her three times a week; talks with her on the telephone; and has her bake pastries for parties. She indicated that in 2004 she had approximately 14 sessions of psychotherapy to resolve anger against her second husband, and was prescribed Paxel to help deal with her nerves and anxiety. The applicant’s mother claims to take hormones on a regular basis for body aches. She states that she has two other sons, besides the applicant, but they do not spend time with her. The applicant stated that his younger brother sees their mother only because she walks to his house, which is two blocks away. He stated that his brothers help their mother financially, but do not spend time with her. The applicant’s mother stated that life would have no purpose without the applicant, and if she feels lonely the applicant’s presence helps her a great deal. [REDACTED] indicated that the applicant’s parents were married for more than 40 years when they divorced two years ago.

On appeal, counsel states that the director ignored substantial evidence of the applicant’s parent’s medical conditions, which would worsen without the care of the applicant. Counsel states that the applicant’s mother is emotionally unstable and has chronic back pain; and that his father had two heart attacks and underwent open heart surgery to implant a pacemaker, is permanently paralyzed on the right side from a stroke, and has prostate cancer.

In rendering this decision, the AAO has carefully considered the documentation in the record.

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant’s mother must be established in the event that she remains in the United States without the applicant, and in the alternative, that she joins the applicant in Israel. 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 establishes that the applicant’s mother would endure extreme hardship if she remained in the United States without the applicant.

As stated in *Perez v. INS*, 96 F.3d 390, 392 (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)).

The letter by [REDACTED] with Kaiser Permanente conveyed that the applicant’s mother was diagnosed with left breast infiltrating tubular carcinoma and that she had surgery to remove her tumor and will need further surgery and radiation treatment for at least six weeks. [REDACTED] conveyed that the applicant’s mother will require moral and physical support. Although the applicant stated that his younger brother lives near their mother, the applicant’s mother indicated that she only has a close relationship with the applicant. Although the record suggests that the applicant’s brothers provide financial support to their mother, it does not reflect that they provide emotional support. In the context of [REDACTED] letter, the AAO finds that the applicant’s mother would experience extreme hardship that is unusual or beyond that which would normally be expected if she were to remain in the United States without the applicant.

The applicant makes no claim of extreme hardship to his mother if she were to join him to live in Israel.

The applicant has established extreme hardship to his mother if she were to remain in the United States without him. However, he has not established extreme hardship to her if she were to join him to live in Israel. Consequently, the applicant failed to establish 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 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.