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FILE: [REDACTED] Office: ATLANTA (CHARLOTTE NC) Date: **JUN 19 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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Atlanta, Georgia, 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 Gambia 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 is married to [REDACTED], a citizen of the United States. 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 May 2, 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 the applicant plead guilty to and was found guilty of six counts of misdemeanor larceny in North Carolina in 1997. The applicant was confined, ordered to pay a fine, fees, and costs and was sentenced to probation and community service.

The applicant’s convictions involve moral turpitude. In *Da Rosa Silva v. INS*, 263 F. Supp. 2d 1005, 1010-12 (E.D. Pa. 2003), 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

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 him inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i).

The AAO will now discuss a 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 U.S. citizen wife. 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 letters, a marriage certificate, birth certificates, wage statements, income tax records, invoices, medical records, a residential rental agreement, a country report by Amnesty International on TheGambia, and other documents.

On appeal, counsel states that the [REDACTED] have been married for four years and have a strong relationship. Counsel states that [REDACTED]'s mother recently died and that [REDACTED] and her husband provide financial assistance and care for her father. Counsel indicates that [REDACTED] has Graves' disease, which causes tiredness, weakness, and bouts of depression, and that her husband works overtime to supplement their income so that [REDACTED] does not have to push herself when she has flareups. Counsel states that Ms. [REDACTED] takes medication for her condition and two incomes help in paying this expense. Counsel states that in The Gambia [REDACTED] would not be able to support himself or provide money to his wife as he will be unable to find employment. Counsel states that [REDACTED] cannot join her husband in The Gambia because she and her father have a medical condition and The Gambia lacks proper medical care. Counsel states that [REDACTED] has substantial ties to his community in the United States and his contact with The Gambia is his mother, who has Alzheimer's disease, and distant relatives.

In his June 2, 2005 letter, the applicant conveyed that he has a close relationship with his wife. He stated that his mother lives in The Gambia and has Alzheimer's disease and that he provides her with material support.

The letter by [REDACTED]'s father-in-law, [REDACTED], stated that [REDACTED] helps with cooking, cleaning, and health issues, and is like a son to him.

The letter by [REDACTED] conveyed that she met the applicant while working and attending college. She stated that her mother died in 2004, and her husband cares for her ill father and for her when she is not feeling well and misses work. She stated that her husband assists her father financially and cleans his house and makes repairs.

The medical records dated December 20, 2004 indicate that [REDACTED] has a thyroid gland that is significantly, symmetrically enlarged with homogeneous tracer distribution and her 24-hour thyroid uptake of I-131 is elevated to 73.3% (the normal range is 10-30%), and that the findings suggest Graves' disease.

The U.S. Department of Education invoice indicates that [REDACTED] has a principal balance due of \$30,885.57; the monthly payment is \$124.39. The monthly payment for Time Warner Cable is \$138.21, and for Verizon is \$94.15. The record contains invoices for professional and diagnostic services. The income tax return for 2004 reflects income of \$37,816. The 2003 income tax return shows [REDACTED] was a student and [REDACTED] was employed as a grocery clerk. Their income was \$32,602. The rental agreement does not indicate the monthly rent. The undated letter by Kroger Co. conveyed that [REDACTED] has been employed there since 2002. The record contains letters attesting to the good character of [REDACTED]. The wage statement for [REDACTED] shows she is employed by Wal-Mart, earning \$8.81 per hour in 2004. [REDACTED] wage statement reflects earnings of \$10.25 per hour. The affidavit of support indicates that [REDACTED] earned an annual salary of \$4,800 employed at Wal-Mart for two hours a week in 2002.

The report on The Gambia describes human rights violations.

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 wife must be established in the event that she joins the applicant, and in the alternative, that she remains in the United States without the applicant. 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 fails to establish that the applicant's wife would endure extreme hardship if she remained in the United States without the applicant.

Counsel states that the applicant's wife has Graves' disease and that her husband works overtime to supplement their income and help pay for [REDACTED]'s medication. The furnished medical records indicate that [REDACTED] has Graves' disease; however, no documentation has been presented to show that [REDACTED] requires medication for the disease and that financial assistance from her husband is needed to pay for it. There is nothing in the record from a physician indicating how this condition affects the applicant's spouse's quality of life or how the applicant's presence would benefit his wife. No documentation has been provided of Ms. [REDACTED] present income or household expenses, other than her student loan and invoices by Time Warner and Verizon. In the absence of such documentation, the AAO cannot determine whether [REDACTED] would experience extreme economic hardship if she were to remain in the United States without her husband. 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).

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 reflects that the applicant’s wife is very concerned about separation from her husband. 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. *Id.* 1050-1051. 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)). 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 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 wife, if she 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 required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s wife, is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

The documentation in the record is insufficient to establish that the applicant’s wife would experience extreme hardship if she were to join the applicant to live in The Gambia.

The conditions in the country where the applicant’s wife would live if she joined her husband 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), citing *Matter of Anderson*, 16 I & N Dec. 596 (BIA 1978).

Counsel claims that the applicant will not find employment in The Gambia. The BIA and courts have held that difficulties in obtaining employment in a foreign country are not sufficient to establish extreme hardship. See, e.g., *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) (“difficulty in finding employment or inability to find employment in one’s trade or profession is mere detriment”).

Counsel claims that [redacted] cannot join her husband in The Gambia because she has a medical condition and The Gambia lacks proper medical care. However, no documentation has been presented to show that

The Gambia lacks proper medical care. 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)).

Although counsel indicates that [REDACTED]'s father has a medical condition and therefore cannot live in The Gambia, hardship to her father will not establish extreme hardship because he is not a qualifying relative under section 212(h) of the Act.

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 to the applicant's wife in the event that she remained in the United States without the applicant, and in the alternative, that she joined the applicant to live in The Gambia. 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 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.