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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEWARK, NEW JERSEY

Date: NOV 24

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.

A handwritten signature in cursive script, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, Newark, New Jersey, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained. The petition will be approved.

The applicant, [REDACTED], is a native and citizen of Egypt who was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for committing a crime of moral turpitude. The applicant is married to a naturalized 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 the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated March 29, 2006.

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 Judgment in a Criminal Case shows that applicant was convicted of violating 18 U.S.C. § 1028(a)(1), 18 U.S.C. § 1028(b)(1)(A)(ii), 18 U.S.C. § 1028(c)(3)(A), and 18 U.S.C. § 2 in the United States District Court Eastern District of Virginia, Richmond Division. He was sentenced to 90 days of imprisonment in the custody of the U.S. Bureau of Prisons, placed on supervised release for two years, and ordered to pay a special assessment.

The statute the applicant violated reads as follows:

Section 1028. Fraud and related activity in connection with identification documents, authentication features, and information.

- (a) Whoever, in a circumstance described in subsection (c) of this section –
- (1) knowingly and without lawful authority produces an identification document, authentication feature, or a false identification document;
- (b) The punishment for an offense under subsection (a) of this section is –
- (1) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 15 years, or both,
if the offense is –
 - (A) the production or transfer of an identification document, authentication feature, or false identification document that is or appears to be –
 - (i) an identification document or authentication feature issued by or under the authority of the United States; or
 - (ii) a birth certificate, or a driver’s license or personal identification card;
- (c) The circumstance referred to in subsection (a) of this section is that –
- (1) the identification document, authentication feature, or false identification document is or appears to be issued by or under the authority of the United States or the document-making implement is designed or suited for making such an identification document, authentication feature, or false identification document;
 - (2) the offense is an offense under subsection (a)(4) of this section; or
 - (3) either –
 - (A) the production, transfer, possession, or use prohibited by this section is in or affects interstate or foreign commerce, including the transfer of a document by electronic means; or

Subsection (a) of 18 U.S.C. § 2 states that “[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”

To determine whether a conviction is for a crime involving moral turpitude, courts apply the categorical and modified categorical approaches established by the Supreme Court in *Taylor v. United States*, 495 U.S. 575,

110 S.Ct. 2143, (1990). Under the categorical approach, the statutory definition of the crime is analyzed; when the convicting statute encompasses violations which do not necessarily involve moral turpitude, precedent requires looking to the record of conviction for a determination of whether the crime committed involves moral turpitude. The record of conviction includes the charge or indictment, the plea, the verdict, and the sentence. *Matter of Esfandiary*, 16 I&N Dec. 659, 661 (BIA 1979) (citations omitted).

The judgment indicates that the applicant was convicted for the production or transfer of an identification document, authentication feature, or false identification document that is or appears to be a birth certificate, or a driver's license or personal identification card. And the statute under 18 U.S.C. § 1028(a)(1) indicates that there was fraud in connection with the identification documents, authentication features, and information.

In *Jordan v. De George*, 341 U.S. 223, 227, 71 S.Ct. 703, 706, 95 L.Ed. 886 (1951), the Supreme states that "fraud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude." *Id.* at 229. The Ninth Circuit in *Blanco v. Mukasey*, 518 F.3d 714, 719 (9th Cir. 2008) states that "fraud requires an attempt to induce another to act to his or her detriment" and that intent to defraud is either explicit in the statutory definition of the crime; or, as its cases have held, is implicit in the nature of the crime when the individual makes false statements in order to procure something of value, either monetary or non-monetary. If the only "benefit" obtained is to impede the enforcement of the law, the crime does not involve moral turpitude. *Blanco* at 719. *See also Tall v. Mukasey*, 517 F.3d 1115 (9th Cir. 2008) (to be inherently fraudulent a crime must involve knowingly false representations made in order to gain something of value). In *Notash v. Gonzales*, 427 F.3d 693 (9th Cir. 2005), the Ninth Circuit stated that to involve moral turpitude, intent to defraud must be an 'essential element' of a conviction." (citation omitted). The BIA in *Matter of Correa-Garces*, 20 I&N Dec. 451 (BIA 1992), states that "[c]onvictions for making false statements have been found to involve moral turpitude."

The AAO finds that because fraud is an essential element of 18 U.S.C. § 1028(a)(1), as the statutory provision states that fraud is connected with an individual's production or transfer of identification documents, authentication features, and information, the applicant's conviction involved moral turpitude. The district director was therefore correct in finding _____ inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i).

Furthermore, the director was correct in finding that _____ crime does not fall within the "petty offense" exception in section 212(a)(2)(A)(ii)(II), which requires that the maximum penalty possible not exceed imprisonment for one year, and the alien not have been sentenced to a term of imprisonment in excess of 6 months, regardless of the extent to which the sentence was ultimately executed.

The AAO will now consider whether the grant of a waiver of inadmissibility is 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 will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant's naturalized citizen spouse and his U.S. citizen son and daughter. 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, affidavits, a marriage certificate, birth certificates, income tax records, invoices, a U.S. Department of State report on Egypt, and other documents.

The report by [REDACTED], stated the following. [REDACTED] the applicant's wife, conveyed that she is treated like a pariah by her family because she converted to Islam, and that as a result she has very little contact with her parents and brother, but that she has a close relationship with her husband and

children. [REDACTED] indicated that she has a high risk of developing diabetes because she previously had gestational diabetes; and that her son (born on [REDACTED] and her daughter (born on [REDACTED] have respiratory disturbances, wheezing, coughing, and asthma-like symptoms, which they inherited from the applicant; and conveyed that her son takes medication for the condition. The applicant's wife stated that her daughter has digestive problems for which she takes pre-digested milk, which the applicant and his wife claim would be extremely difficult and expensive to find in Egypt. The applicant's husband conveyed that the pollution levels in Egypt are far greater than in the United States and the risk of fatality as a result of an asthma or an asthma-related disorder in Egypt is much greater than it would be in the United States. The [REDACTED] are concerned about discrimination against their children in Egypt because they are U.S. citizens, and about obtaining employment in Egypt. [REDACTED] conveyed that she does not speak Arabic and has medical coverage here but would not have it in Egypt. The [REDACTED] children would develop separation anxiety if separated from their father, as demonstrated in research with children by [REDACTED] Ms. [REDACTED] has an Adjustment Disorder with Mixed Anxiety and Depressed Mood as a result of her apprehension that her husband will have to leave the United States and return to Egypt.

The psychological report by [REDACTED] dated March 15, 2006, stated that [REDACTED] was raised in the Hindu religion and converted to Islam before marrying her husband. She stated that [REDACTED] parents disapprove and for this reason [REDACTED] is no longer as close to them as she used to be. She stated that [REDACTED] mother has a visitor's visa and stays with her son and daughter-in-law for six months at a time, helping with the children. [REDACTED] earns \$17,000 a year and without her husband would not have sufficient income to cover family expenses. [REDACTED] would have severe adjustment problems in Egypt as she does not know the language and customs and would be discriminated against for being American. Ms. [REDACTED] would be charged double for her children to attend school and her husband would have to attend college to find work. As a woman, [REDACTED] would not be able to walk freely on her own. She worries about her son being kidnapped by an extremist group and her daughter being kidnapped and given a female circumcision. [REDACTED]'s children have severe medical problems. [REDACTED]'s children have Medicaid Insurance, which covers their medical care; but they will not have charity care in Egypt. [REDACTED] tends toward diabetes and monitors her sugar level.

The letter dated March 1, 2006 by [REDACTED], indicated that the applicant's son and daughter have a family history of asthma and are under the doctor's care for frequent respiratory infections for which they will probably be susceptible to for several years. The prescription form by [REDACTED] indicated that the applicant's children have been under his care for frequent respiratory infections and are susceptible to the infections for several more years to come.

The letter by [REDACTED], dated April 20, 2006 conveyed that the applicant's husband was diagnosed with asthmatic, chronic wheezing chest, and bronchial asthma; and it recommended factors to avoid and to have follow-up on a regular bi-weekly basis.

The affidavit dated April 27, 2006 by [REDACTED] is summarized as follows. She and her children need the applicant. When she was separated from him for the three-month sentence, her life collapsed and she had more than \$11,000 in debt for rent arrears, late bills, and medical expenses. Her husband now contributes approximately 60% to their income, earning \$24,000 annually; her salary is approximately \$16,000 annually. She will fall below the 2005 poverty guidelines without her husband's income. She spent most of her life in

Egypt; she is not an Arab and does not speak Arabic, her children are U.S. citizens and would be disliked for that reason. She wants her children to have the freedoms and benefits of the United States. Egypt has civil violence and unrest, its government is unstable, it lacks medical resources, and a child cannot be a child as they are in the United States. She would not find employment in Egypt and because her husband is not a college graduate he would have limited employment options. They have a nice life in the United States and living on a severely limited income in Egypt would make her tense and anxious. Her children have chronic respiratory infections, require constant medical care, and are at risk for asthma. Her husband told her that Alexandria, Egypt, where her husband grew up, has poor air quality, worse than the United States, and is mostly comprised of shanty towns.

In the affidavit of the same date by [REDACTED] stated that he wants his children to grow up in the United States, where his daughter will receive equal treatment, and his children will have access to the best doctors, medicine, and emergency care for their respiratory-related illnesses and to the U.S. public school system.

In an affidavit dated March 14, 2006, [REDACTED] conveyed, in addition to other statements, the following. Her family will be subject to kidnapping, robbery, and extortion in Egypt. There is no opportunity for full-time employment in Egypt, where there is nearly 65 percent unemployment. Her children would be subject to indoctrination and mental torture in Egypt, required to attend Mosque daily, and taught to hate the United States by Muslim extremists. Her daughter would have the real prospect of being subject to female genital mutilation by a local Imam. They would be ostracized and assaulted because they come from the United States. They will not have medical coverage in Egypt and will lose the coverage they now have. Her children's respiratory infections are now monitored and cared for and in Egypt this will not happen. Separation from her husband will cause hardship to the family. She would fear for her husband's life if he returned to Egypt. He would have to serve in the army without compensation and will face violence for not being a devout Muslim and for his ties to the United States.

The affidavits by [REDACTED] are essentially similar in content. Essentially, they convey the difficulties the Hassans would have living in Egypt and the hardships [REDACTED] and her children would have they remained in the United States without the applicant. In addition, the letter by [REDACTED] stated that as a medical doctor by profession he is aware of the poor air quality in Egypt and that the [REDACTED] children are susceptible to chronic respiratory infection because of their family history of asthma. He stated that as a native Egyptian he knows treatment for asthma and other respiratory problems in Egypt is limited. He stated that he knows that [REDACTED] is an only child and her parents depend on her for their care.

The affidavits by [REDACTED] father conveyed, in addition to other statements, that he depends on his daughter for financial and emotional support. The affidavit by [REDACTED] mother is similar in content to those of her husband and the affidavit of [REDACTED] brother is similar to that of his parents.

The letter by Mirad Committee of North America dated April 26, 2006 indicated that the applicant's family needs him.

The amended income tax record for 2005 reflects \$20,304 in income; it shows [REDACTED] income as \$7,758 and her husband's business income as \$3,068; unemployment compensation was \$6,318. The income

tax records for 2004 show [REDACTED] income as \$18,030; no income is shown for her husband. The income tax records for 2003 show her income as \$13,713; no income is shown for her husband.

The April 26, 2006 letter by [REDACTED] the owner of [REDACTED] Jewelry stated that the applicant's husband has been a full-time employee there since November 2005, earning \$24,000 annually based on sales performance to date. The letter by Badr School Administration conveyed that [REDACTED] has been employed at Badr School since September 2005 as a second grade teacher.

The Consular Information Sheet on Egypt stated that Egypt has a low crime rate but has had a series of terrorist attacks in or near tourist sites in late 2004 and in 2005. It stated that there are many Western-trained medical professionals in Egypt and that medical facilities are adequate for non-emergency matters and emergency and intensive care facilities are limited.

The letter by [REDACTED] with the Center for Middle Eastern Studies relates to teenage children who are returning to live in Egypt. He indicated that children are treated as being "Americanized" and would be subject to ostracism, verbal taunts, or physical attacks. He stated that many schools in Egypt would require girls who are older than nine to wear form concealing overcoats and headscarves and boys and girl undergo religious training. [REDACTED] stated that girls in the lower middle and middle classes in Egypt are expected to get some schooling, often to the junior or senior high school level, and then to find a husband. He stated that adolescents are subject to arbitrary arrests.

The U.S. Department of State report on Egypt described human rights practices in Egypt in 2004; it stated that female genital mutilation, prevalent among Muslims and Christians, is a widespread practice and is not supported by the government. It stated that the government provided medical care for all children.

The applicant's daughter was born on [REDACTED] his son was born on [REDACTED].

On appeal, counsel states that the applicant's son is enrolled in daycare at Badr School, where his mother teaches. Counsel indicates that the U.S. Department of State Report, the psychological examination by Dr. [REDACTED] and the letters by physicians establish extreme hardship. He states that the cases cited by the district director are distinguishable from the instant case.

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

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's qualifying relative 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 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 applicant has established that his wife and children would endure extreme hardship if they remained in the United States without him. [REDACTED] indicates that the [REDACTED] family depends on her husband for financial support. The [REDACTED] family's income was \$20,304 in 2005; [REDACTED]'s income contribution to that income was \$3,068. The 2005 income, which included unemployment compensation, was approximately \$4,000 above the 2005 Health and Human Services Poverty Guideline of \$16,090 for a family of three. The

AAO notes that the April 2006 letter by [REDACTED] is submitted to show that [REDACTED] became a full-time employee in November 2005 with [REDACTED] Jewelry, earning \$24,000 annually based on his sales performance to date.

Based on the evidence in the record, the applicant established extreme hardship to his family if they were to remain in the country without him [REDACTED] would become a single mother with two very small children, making barely above the poverty level. This, combined with the emotional distress of the separation cumulatively rises to the level of extreme hardship.

The documentation in the record is also sufficient to establish that the applicant's wife, son, and daughter would experience extreme hardship if they were to join the applicant to live in Egypt.

The conditions in the country where the applicant's wife and children would live if they joined the applicant 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).

[REDACTED] is concerned that her daughter may be forced to undergo female genital mutilation and the country report indicates that female genital mutilation is widespread in Egypt as an accepted traditional and family practice with an estimated 97 percent of women who have ever been married having undergone female genital mutilation. Regarding children, the report states that female mutilation remained a "serious problem and was widely performed." *U.S. Country Reports on Human Rights Practices – 2004, Egypt*. Regarding children, the report states that female mutilation remained a "serious problem and was widely performed." Based upon the country report, the AAO finds that it is very likely that when the applicant's daughter reaches the appropriate age she will be forced to undergo female genital mutilation.

To establish extreme hardship to the [REDACTED] children, the applicant submitted, among other documents, Dr. [REDACTED] letter, which relates to children who are returning to Egypt after living in the United States, and it describes how they may be treated by other children, how girls and adolescents are treated, and the educational system.

U.S. courts have held that the consequences of deportation imposed on citizen children of school age must be considered in determining extreme hardship. For example, *In Re. Kao & Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to transition to life in Taiwan; she had lived her entire life in the United States, was integrated into an American lifestyle, and uprooting her at this stage in her education and her social development would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the court indicated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. And, in *Prapavat vs. I.N.S.*, 638 F. 2nd 87, 89 (9th Cir. 1980) the court found the BIA abused its discretion in concluding that extreme hardship had not been shown in light of the fact that the

aliens' five-year-old citizen daughter, who was attending school, would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

Given the fact that the [REDACTED] five-year-old son is of school age and the fact that the [REDACTED] children have lived their entire lives in the United States, and in light of the significant cultural differences between the United States and Egypt and the potential medical problems, the AAO finds the children would experience extreme hardship in adjusting to life in Egypt if they were to join their father to live there. *See In Re. Kao & Lin, Ramos, Prapavat, supra.*

The record establishes extreme hardship to the [REDACTED] children in the event they were to join their father to live in Egypt and it demonstrates extreme hardship to the family if they were to remain in the United States without the applicant. Thus, the applicant established extreme hardship to a qualifying family member for purposes of relief under 212(h) of the Act, 8 U.S.C. § 1182(h).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's family members, and his employment history and payment of taxes. The unfavorable factors in this matter are the applicant's conviction of a crime involving moral turpitude, and his periods of unlawful presence.

The AAO finds that the unfavorable factors in this case are outweighed by the hardship imposed on the applicant's spouse and children as a result of his inadmissibility. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter. **Accordingly, the appeal will be sustained. The petition will be approved.**

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. **Accordingly, the appeal will be sustained. The waiver application will be approved.**

ORDER: The appeal is sustained. The waiver application is approved.