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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3042
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 11 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Israel who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated December 8, 2006.

On appeal, counsel for the applicant asserts that the applicant's son and daughter will experience extreme hardship if the applicant is compelled to depart the United States. *Statement from Counsel on Form I-290B*, submitted January 10, 2007.

The record contains a statement from counsel on Form I-290B; statements from the applicant's daughter; a birth record for the applicant's daughter; copies of passports for the applicant's daughter and grandchildren; a copy of the applicant's daughter's naturalization certificate; a copy of an evaluation of the applicant's grandson, including evidence that he has Down's Syndrome and he is involved in a care program; medical documentation for the applicant; tax records for the applicant; a copy of the applicant's passport; and documentation relating to the applicant's criminal convictions.

It is noted that counsel indicated on Form I-290B that he would send a brief and/or evidence to the AAO within 60 days of filing the appeal. The appeal was filed on January 10, 2007. However, as of the date of this decision, the AAO has received no further documentation or correspondence from the applicant or counsel, and the record is deemed complete. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

- (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 212(h) of the Act provides, in pertinent part, that:

The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . of subsection (a)(2) . . . if -

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
 - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
 - (iii) the alien has been rehabilitated; or

- (1) (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 [now the Secretary of Homeland Security (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

The record reflects that the applicant has three criminal convictions, including two convictions under California Penal Code section 484(A) in 1987 for theft, as well as a conviction under California Penal Code section 602(K) in 2003 for trespass for the purpose of injuring property or property rights or with the intention of obstructing or injuring any lawful business or occupation. There is ample support that theft under California Penal Code section 484(A) constitutes a crime involving moral turpitude. See *U.S. v Esparza-Ponce*, 193 F.3d 1133, 1135-37 (9th Cir. 1999). Malicious trespass constitutes a crime involving moral turpitude where the applicant intended to enter the land to commit a crime involving moral turpitude. See, e.g., *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979). The record reflects that the applicant was convicted for trespass for the purpose of injuring property or property rights or with the intention of obstructing or injuring any lawful business or occupation. The applicant has not submitted documentation to show her intent in trespassing on the land of another, yet it is observed that she was also simultaneously charged with petty theft. Thus, the record suggests the applicant intended to trespass to commit theft, and she has not asserted or shown otherwise. Accordingly, the applicant's conviction under California Penal Code section 602(K) constitutes a crime involving moral turpitude. The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

It is noted that the applicant is not eligible to be considered for a waiver under the standard set in section 212(h)(1)(A) of the Act, as 15 years have not passed since she committed the conduct that

led to her conviction under California Penal Code section 602(K). Section 212(h)(1)(A)(i) of the Act.

The AAO notes that section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship the applicant experiences due to her inadmissibility is not a basis for a waiver under section 212(h) of the Act. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

On appeal, counsel asserts that the applicant's son and daughter will experience extreme hardship if the applicant is compelled to depart the United States. *Statement from Counsel on Form I-290B* at 1. Counsel states that the applicant's daughter has a son with Down's Syndrome, and that the applicant assists in his care. *Id.* Counsel notes that the applicant's grandson receives Regional Center assistance, but that the applicant is the only person other than the applicant's daughter who is able to provide overnight care. *Id.* Counsel states that the applicant's daughter cares for her other two children and works. *Id.* Counsel asserts that the applicant's daughter will experience extreme hardship without the applicant's assistance in the care for her son. *Id.*

Counsel further asserts that the applicant's criminal history of theft is due to a psychological condition, and that her criminal convictions should not carry as much weight when analyzing extreme hardship. *Id.* at 2.

The applicant's daughter states that she resides with her husband and three children. *Statement from Applicant's Daughter*, dated November 14, 2006. She explains that the applicant's only family is her, her brothers, and the applicant's grandchildren, as she is widowed. *Id.* at 1. She states that the applicant's family members support the applicant financially, emotionally, and physically. *Id.* She indicates that the applicant's health has been deteriorating since being hospitalized in 2003, and that she and her brother feel an ethical and moral obligation to support the applicant. *Id.* She states that they will not be able to care for the applicant should the applicant return to Israel. *Id.* She indicates that that

the applicant has diabetes, hypertension, emphysema, congestive heart failure, recurrent chest pain, mild renal insufficiency, osteoporosis, and severe depression. *Id.*

The applicant's daughter states that the applicant takes her grandchildren to her apartment for overnight visits. *Id.* at 2. She explains that the applicant has a close relationship with her grandson with Down's Syndrome, and that she takes him overnight and is the only person capable of doing this. *Id.* She states that the applicant and the Regional Center provide her with her only assistance. *Id.*

The applicant's daughter explains that the applicant resides in an apartment complex, and that she sees the applicant three to four times per week. *Id.* She provides that she was unaware of the applicant's criminal history until 2004. *Id.* She notes that the applicant has seen a therapist in Israel and the United States. *Id.* She indicates that she will experience emotional hardship due to the applicant's suffering should the applicant return to Israel. *Id.*

The applicant's daughter states that she will be unable to travel to Israel to visit the applicant, as it costs \$20,000 for the entire family to travel there for one month. *Id.* at 3. She provides that her husband operates a business and works constantly. *Id.* She asserts that she is unaware of how she will afford to hire someone to care for the applicant full-time in Israel. *Id.*

Upon review, the applicant has not shown that a qualifying relative will experience extreme hardship should she be compelled to depart the United States. Counsel states that the applicant's son will endure extreme hardship if the applicant departs the United States. However, the applicant has not submitted evidence that she has a U.S. citizen or permanent resident son, such as a birth certificate or immigration documentation for her claimed son. Nor has the applicant provided a detailed explanation of possible hardships to her son. Thus, the applicant has not shown that hardship to her alleged son may serve as a basis for a waiver under section 212(h)(1)(B) of the Act.

Counsel asserts that the applicant's U.S. citizen daughter will experience extreme hardship should the applicant depart the United States. However, the applicant has not shown that her daughter's hardship will rise to the level of extreme hardship. The applicant's daughter stated that the applicant provides essential childcare services for her son with Down's Syndrome. However, the applicant has not shown that her assistance is required for her grandson. The AAO acknowledges that caring for a child with a disability requires significant effort. Yet, the record reflects that the applicant's daughter receives assistance from a Regional Center for daytime care. The applicant's daughter also cares for her two other children, and while it is understood that her son with Down's Syndrome has special needs, she did not show that his needs are so different from her other two children that he requires separate care. It is noted that the applicant's daughter resides with her husband, and nothing in the record reflects that he is unavailable to participate in the care of their children. The applicant's daughter indicated that she sees the applicant three or four times per week, thus the record suggests that the applicant does not provide care for her grandson every night, and the applicant's daughter meets her childcare needs by other means.

The AAO acknowledges the applicant's daughter's desire to have a close family member serve as a care giver for her son when needed. Yet, the applicant has not shown that hired assistance is not possible, or

that her daughter lacks financial resources to afford additional care. The record contains no indication that the applicant's grandson has difficulty in the care of the Regional Center when family members are not present.

Thus, the applicant has not shown that her presence is required for the care of her grandson, or that her daughter would experience extreme hardship without the applicant's assistance.

The applicant's daughter described hardships to the applicant in detail should the applicant be compelled to depart the United States. However, as noted above, hardship the applicant experiences due to her inadmissibility is not a basis for a waiver under section 212(h) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. It is reasonable that hardship to the applicant will create emotional hardship to the applicant's daughter. However, the applicant has not shown that her challenges will elevate her daughter's hardship to extreme hardship.

The applicant's daughter noted that the applicant has seen a therapist in Israel, which suggests she will have access to health care should she return there. The applicant's daughter asserted that she and her brother support the applicant financially, yet the applicant has not submitted evidence or explanation of her own financial resources or income. The applicant has not provided documentation of how she meets her regular expenses, such that the AAO can determine whether she receives or requires assistance from her daughter. Thus, the applicant has not shown that her departure would create an economic burden on her daughter.

The applicant's daughter indicated that she and her family would face emotional difficulty if separated from the applicant. Yet, the applicant has not distinguished this emotional hardship from that which would ordinarily be expected when family members are separated due to inadmissibility. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to **prove extreme hardship**. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

Based on the foregoing, the applicant has not established that her daughter will experience extreme hardship should she depart the United States and her daughter remain.

The applicant has not asserted or shown that her daughter is unable to relocate to Israel to maintain family unity should she choose. Thus, the applicant has not shown that her daughter would experience extreme hardship should she join the applicant abroad.

It is noted that counsel asserts that the applicant's criminal history of theft is due to a psychological condition, and that her criminal convictions should not carry as much weight when analyzing extreme hardship. However, the gravity of the applicant's criminal activity is not relevant to an analysis of whether the applicant's daughter will experience extreme hardship.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that the instances of hardship that will be experienced by her daughter, should the applicant be prohibited from remaining in the United States, considered in the aggregate, rise to the level of extreme hardship. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.