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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: SEP 24 2009

IN RE:

[Redacted]

PETITION: 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 PETITIONER:

[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.

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Syria 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 committed a crime 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 with her naturalized U.S. citizen child and two lawful permanent resident children.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Director*, dated March 9, 2007.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application and that the applicant's children would suffer extreme hardship should the applicant be returned to Syria. *Form I-290B; Attorney's brief*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, medical statements and records for the applicant; business registration certificates; tax registration and articles of incorporation; a Citrus College enrollment verification certificate; a statement from the applicant's church; a statement from the applicant; a country conditions report; statements from the applicant's children; tax statements for the applicant's children; W-2 Forms for one of the applicant's children; criminal documents and court records for the applicant; and a community service certificate for the applicant. The entire record was considered in rendering a decision on the appeal.

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

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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 -
 - (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

(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 . . .

Section 212(h) 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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record shows that on October 28, 1998 the applicant pled nolo contendere to Theft of Property under section 484(A) of the California Penal Code. *Court records, Municipal Court of Citrus Judicial District, County of Los Angeles, State of California*, dated March 1, 2000. On May 2, 2001 the applicant pled nolo contendere to Petty Theft with a Prior under section 666-484(A) of the California Penal Code. *Court records, Municipal Court of Los Angeles – San Fernando Judicial District, County of Los Angeles, State of California*, dated November 9, 2001. In *U.S. v. Esparza-Ponce*, the 9th Circuit Court of Appeals found petty theft in California to be a crime involving moral turpitude. 193 F.3d 1133 (9th Cir. 1999). Furthermore, the BIA has held several times that petty larceny is a crime involving moral turpitude. *Id.* citing *Morales Alvarado*, 655 F.2d at 174 ("The

[BIA] held that both convictions [of indecent liberties and petty theft] were crimes of moral turpitude."); *In re De La Nues*, 18 I. & N. Dec. 140, 145 (BIA 1981) ("Burglary and theft or larceny, whether grand or petty, are crimes involving moral turpitude."); *In re Scarpulla*, 15 I. & N. Dec. 139, 140-41 (BIA 1974) ("It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude."). As such, the AAO finds the applicant has committed a crime involving moral turpitude and is thus inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this finding.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's qualifying relative must be established whether he or she resides in Syria or the United States, as he or she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's children join the applicant in Syria, the applicant needs to establish that her children will suffer extreme hardship. The record shows that the applicant's children were born in Syria. *Passports for the applicant's children; Lawful permanent residency cards and naturalization certificate for the applicant's children.* Counsel notes the applicant's children do not have family ties outside the United States. *Attorney's brief*, dated April 26, 2007. The applicant's child, [REDACTED] states that the thought of returning to Syria frightens him. *Statement from [REDACTED]* dated October 25, 2006. The applicant's children were granted asylum in the United States after fleeing Syria. *Order of the Immigration Judge, U.S. Department of Justice, Executive Office for Immigration Review, Immigration Court, Los Angeles, California*, dated December 3, 1996; *Asylum Approval Notice, Los Angeles Asylum Office*, dated March 28, 2000; *Form I-94 departure cards showing asylee status.* The AAO also observes that on February 12, 2009 the United States Department of State issued a travel warning to Syria which remains in effect for U.S citizens. *Travel Warning, Syria, United States Department of State*, dated February 12, 2009. As such, when looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to her children if they were to relocate to Syria.

If the applicant's children reside in the United States, the applicant needs to establish that her children will suffer extreme hardship. As previously noted, the record shows that the applicant's children were born in Syria. *Passports for the applicant's children; Lawful permanent residency cards and naturalization certificate for the applicant's children.* Their father is deceased. *Death certificate.* The applicant has a history of breast carcinoma and is undergoing therapy. *Statement*

from [REDACTED], dated June 26, 2006. She has suffered nausea and vomiting following her first cycle of chemotherapy. *Id.* She also has chemotherapy-induced anemia for which she has been receiving intermittent Procrit injections. *Statement from [REDACTED]* dated July 24, 2006. The applicant's son, [REDACTED], states that he has lived in the same house with his mother since his arrival in the United States. *Statement from [REDACTED]* dated October 25, 2006. He notes that he is accustomed to seeing and interacting with her on a daily basis and asserts that if he were separated from her, there would be an emotional void that could never be filled. *Id.* He notes that in Syria, there would be no one to assist her with her daily activities, as she has been receiving chemotherapy treatments every three weeks. *Id.* He states that because he feels responsible for her care, he does not know how he would be able to cope with the prospect of her living in Syria. *Id.* The applicant's daughter, [REDACTED], states that she, too, has lived in the same house with her mother since her arrival in the United States. *Statement from [REDACTED]*, dated October 25, 2006. She notes that after her mother's chemotherapy treatments, her mother is extremely weak and needs someone to assist her with daily activities. *Id.* She wants the opportunity to be there for her mother in her time of need, just as her mother has been there for her during her times of need. *Id.* She notes that her mother has been her sole support system and she does not know what she would do without her. *Id.*

The 9th Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the 9th Circuit Court of Appeals. The AAO also notes that, if the applicant were to be removed to Syria, she would be returned to the country from which her two youngest children received asylum as recently as 2000. When looking at the aforementioned factors, particularly the applicant's medical condition as documented by a licensed healthcare professional, the emotional hardship the applicant's children would encounter if their ill mother were returned to Syria, and the fact that this case arises within the jurisdiction of the 9th Circuit, the AAO finds that the applicant has demonstrated extreme hardship to her children if they were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's criminal offenses for which she now seeks a waiver.

The favorable and mitigating factors are the applicant's United States citizen and lawfully permanent resident children, the extreme hardship to her children if she were refused admission, her long-term and supportive relationship with her children, her completion of community service through a community service agency (*see Certificate of completion, Community Service Agency, dated April 27, 1999*), her asylee status and her regular church attendance (*see Statement from [REDACTED]*

_____ dated November 5, 2006). The applicant's most recent criminal conviction took place in 2001, and while this cannot be overlooked, the applicant has no other criminal offenses since that time.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.