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



U.S. Citizenship
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FILE: [REDACTED] Office: LONDON, UNITED KINGDOM Date: **JUL 13 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h), 8 U.S.C. § 1182(h) of the Immigration and Nationality Act

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.

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).

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

[REDACTED]

DISCUSSION: The waiver application was denied by the Field Office Director, London, United Kingdom, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Denmark. The director stated that the applicant was inadmissible under 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 committing crimes involving moral turpitude; and under section 212(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii), as an alien classified as having a mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that Dr. [REDACTED] Chief of the Immigrant, Refugee and [REDACTED], determined that the applicant is not inadmissible under section 212(a)(1)(A)(iii)(I) of the Act. Furthermore, counsel contends that the director failed to consider the hardship factors in the aggregate, which would have shown that the applicant established extreme emotional hardship to his spouse if she remained in the United States without him, and extreme financial and emotional hardship if she joined him to live in Denmark.

The AAO will first address the director's finding that the applicant is inadmissible under section 212(a)(1)(A)(iii)(I) of the Act, as an alien classified as having a physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. Section 212(a) of the Act provides, in pertinent part:

(a) Classes of Aliens Ineligible for Visas or Admission.--Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.--

(A) In general.--Any alien-

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others . . . is inadmissible.

. . .

The record contains a letter by Dr. [REDACTED] dated November 7, 2007, which conveys that the applicant is not inadmissible under section 212(a)(1)(A)(iii) of the Act. Thus, based on Dr. [REDACTED] determination, we find that the director erred in concluding that the applicant is inadmissible under section 212(a)(1)(A)(iii) of the Act.

The director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing crimes involving moral turpitude. 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.

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 reflects that the applicant has two criminal convictions. On October 16, 2004, a police officer and rescue officer were dispatched to investigate an unconscious homeless person, and found the applicant, who was intoxicated. The applicant struck the police officer in the face, causing a slight facial swelling, and struck the rescue worker in the face, inflicting a lip abrasion. The applicant was ordered to pay costs and his sentence of 60 days imprisonment was suspended on the condition that he would not commit a criminal offense for two years.

Assault on a law enforcement officer has been found to be a crime involving moral turpitude where the perpetrator knows the victim to be a law enforcement officer performing his official duty and the assault results in bodily injury to the officer. See *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988) (distinguishing cases in which knowledge of the police officer's status was not an element of the crime and where bodily injury or other aggravating factors were not present to elevate offense beyond "simple" assault); see also *Matter of O-*, 4 I&N Dec. 301 (BIA 1951) (German law involving

an assault on a police officer was not a crime involving moral turpitude because knowledge that the person assaulted was a police officer engaged in the performance of his duties was not an element of the crime); *Matter of B-*, 5 I&N Dec. 538 (BIA 1953) (as modified by *Matter of Danesh, supra.*) (assault on prison guard not a crime involving moral turpitude because offense charged appeared to be only "simple" assault and no bodily injury was alleged); *Ciambelli ex rel. Maranci v. Johnson*, 12 F.2d 465 (D. Mass 1926) (assault on an officer was not a crime involving moral turpitude in spite of fact that defendant was armed with a razor because the razor was not used in the assault).

With the instant matter, the applicant was intoxicated when he struck the police officer and rescue worker and he used no weapon in the assault. In view of the decisions cited above, it is not clear that the applicant, due to his intoxication, had the requisite state of mind for his assault on the police officer to constitute a crime involving moral turpitude. Moreover, we find that his assault would be properly characterized as "simple" in that no weapon was used and the injuries sustained were minor in nature. Thus, we find that the applicant's 2004 conviction is not a crime involving moral turpitude.

In July 1995, the applicant was charged with and found guilty of violation of the Danish Penal Code section 245(1) due to beating his spouse's body, tearing her hair, kicking her in the groin, and attempting to strangle her. The applicant's sentence of 40 days' imprisonment was suspended and he was ordered to perform community service. The BIA has found that assault and battery offenses involve moral turpitude where there is an aggravating factor such as the use of a deadly weapon, the intentional infliction of serious bodily injury, and bodily harm upon individuals deserving of special protection such as a child, domestic partner, or a peace officer. See *In re Samudo*, 23 I&N Dec. 968 (BIA 2006). In view of *In re Samudo*, we find that the applicant's offense, infliction of bodily harm upon his spouse, is morally turpitudinous. As such, the director was correct in finding him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

A waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) 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 qualifying relative here is the applicant's U.S. citizen spouse. 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).

Because the applicant's crime against his former spouse qualifies as a violent crime, the applicant must prove "exceptional and extremely unusual hardship" to a qualifying relative, so the AAO will evaluate whether the evidence meets this standard. 8 C.F.R. § 212.7(d). In order to show "exceptional and extremely unusual hardship," the applicant must show more than "extreme hardship." *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001) (holding in cancellation of removal case that the "standard requires a showing of hardship beyond that which has historically been required in suspension of deportation cases involving the 'extreme hardship' standard"). The hardship "must be substantially beyond the ordinary hardship that would be expected when a close family member leaves this country," and is "limited to truly exceptional situations." *Id.* (internal quotation marks omitted). However, the applicant need not show that hardship would be unconscionable. *Id.* at 60.

Family separation must be considered in determining hardship. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) the Ninth Circuit discussed the effect of emotional hardship on the alien and her husband and children as a result of family separation. The Ninth Circuit stated that "the most important single hardship factor may be the separation of the alien from family living in the United States" and that there must be a careful appraisal of "the impact that deportation would have on children and families." *Id.* at 1293. Furthermore, the Ninth Circuit indicated that "considerable, if not predominant, weight," must be attributed to the hardship that will result from family separation. *Id.* In *Yong v. INS*, 459 F.2d 1004 (9th Cir. 1972), the Ninth Circuit reversed a BIA decision denying an application for suspension of deportation. The Ninth Circuit noted that "[s]eparation from one's spouse entails substantially more than economic hardship." *Id.* at 1005.

The record contains letters, affidavits, birth certificates, medical records, and other documentation. In rendering this decision, the AAO will consider all of the evidence in the record.

With regard to the applicant's spouse joining the applicant to live in Denmark, counsel asserts that the applicant's spouse has deep venous thrombosis (DVT) and cannot travel long distances due to condition. Dr. [REDACTED], a vascular surgeon, states in the letter dated February 4, 2008, that he saw the applicant's spouse for evaluation of her DVT, which occurred during a flight to Denmark in 2005. He conveys that in 2005 the applicant's spouse's had blood work that showed that she has protein-S deficiency, "which puts her at somewhat of an increased risk of blood clots in the future." Dr. [REDACTED], however, does not assert that the applicant's wife cannot travel long distances on account of her protein-S deficiency. Moreover, the AAO notes that the record does not indicate that the applicant's spouse could not travel by ship rather than airplane. Lastly, we observe that the applicant's wife's condition still allows her to work as a paraprofessional educator in a classroom. Dr. [REDACTED] letter reveals that the applicant's spouse was diagnosed with fibromyalgia, psoriatic arthritis, depression, and neuropathic pain; and Dr. [REDACTED] indicates that fibromyalgia and depression are exacerbated by cold temperatures, humidity, and stress. Counsel asserts that the applicant's wife lives in Georgia and relocation to Denmark, where it is cold and damp, would be unbearable for her. Counsel maintains that the applicant's wife will lose all of her governmental benefits, including health care. He contends that the applicant's spouse will be unable to obtain employment in the near future in Denmark, and that the applicant will not be able to meet the

immigration requirements for housing and collateral for his wife. Counsel submits a letter by Jan Thygesen, dated March 17, 2006, which conveys that the applicant does not have his own permanent place to live and is registered as living with his parents. [REDACTED] further indicates that prior to the time the applicant's wife receives permission to stay in Denmark she will not be covered by public health insurance. Although we acknowledge that the submitted information about obtaining a resident permit suggests that the applicant must satisfy a housing and collateral requirement in order for his wife to live in Denmark, we find that no documentation has been provided to show that the applicant ever applied for and was denied the residence permit for his wife. In addition, we find that [REDACTED] indicates that once the residence permit is approved, the applicant's wife will be entitled to use Denmark's public health insurance. Furthermore, the applicant has not shown that Denmark's public health insurance is inferior to his wife's current health insurance or that she will not receive adequate medical care for her health problems. We observe that the applicant's spouse indicated that she was treated in Denmark for DVT. Although the applicant submitted evidence of a contract with Forenede Service to show that his employment there was terminated in November 7, 2005, he has provided no documentation to show that he will be unable to obtain another job in Denmark for which he is qualified that will be sufficient to support his wife. We note that the record conveys that the applicant is presently employed with [REDACTED]. The applicant's spouse contends in her affidavit that she would like to continue her education in early childhood education in the United States.

Counsel asserts that if the applicant's spouse moved to Denmark she would experience extreme emotional hardship due to separation from her parents, siblings, and nieces and nephews, who all live near her. Family separation must be considered in determining hardship. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998), the Ninth Circuit stated that "the most important single hardship factor may be the separation of the alien from family living in the United States." *Id.* at 1293. However, in *Matter of Shaughnessy*, the BIA considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12. Counsel states that the applicant's wife takes care of her parents and that her father has difficulty with mobility and will be unable to travel any distance, and that he was diagnosed with two aortic aneurisms five years ago. The medical records reflect that the applicant's father has a stent, was in the hospital for two weeks in June 2001 for surgery for a groin infection, and takes medication. Counsel declares that the applicant's mother-in-law has diabetes and high blood pressure and in 1995, was diagnosed with having a blood clot in route to her brain. He states that she is at high risk for DVT. The medical records for the applicant's wife show her prescribed medication, and the record contains her durable power of attorney; however, no documentation has been provided to show that she has a high risk of having DVT or was diagnosed with a blood clot. Counsel states that the applicant's wife lives with her parents because of her and her parent's medical conditions. The applicant's sister indicates in her letter that her sister and the applicant will live in a mobile home that is located next door to their parents.

If the applicant's spouse joined the applicant to live in Denmark, the asserted hardship factors of the applicant's spouse are the emotional hardship of family separation and not being able to take care of her parents, financial hardship, not qualifying for or receiving adequate medical care in Denmark, not being able to travel to the United States due to health problems, worsening of health problems from Denmark's climate, not being able to continue a degree in early childhood development in the United States. The applicant has not fully demonstrated that his in-laws require daily assistance

from his wife or that his wife's siblings are unwilling or unable to help his in-laws. Moreover, he has not sufficiently demonstrated that his wife will be unable to travel to visit her family members in the United States. The applicant has not shown that his wife will not qualify for or receive adequate medical care in Denmark or that he will be unable to obtain her residence permit. The AAO acknowledges that the applicant's spouse has health problems that may be affected by Denmark's climate and that the applicant's wife may not be able to obtain a degree in early childhood development. Nevertheless, when all of the alleged hardship factors are considered in the aggregate, we find that the hardship endured by the applicant's wife as a result of joining the applicant to live in Denmark does not meet the "exceptional and extremely unusual hardship" standard set forth in 8 C.F.R. § 212.7(d).

With regard to the applicant's spouse remaining in the United States without the applicant, counsel declares that the applicant's spouse was diagnosed with depression, which is caused by separation from the applicant and her chronic illnesses. We note that the record reflects that the applicant and his wife met on-line in a Jehovah's Witnesses chat room in December 2002, and that they had daily contact through e-mail and instant messaging until they met in July 2003, when the applicant came to the United States. It shows that the applicant visited again in April 2004, and that they married in October 2004 in the United States, and the applicant returned to Denmark in November 2004. It shows that the applicant's wife visited the applicant in May 2005.

The hardship factor asserted in the instant case is the applicant's wife's depression as a result of separation from her husband. Although the AAO acknowledges the substantial weight given to family separation in the hardship analysis, we find that even though the applicant's spouse has had constant communication with her husband since December 2002, she has never lived with him for more than a few months. Thus, in view of the evidence in the record, the AAO finds that the hardship endured by the applicant's wife as a result of separation from the applicant does not meet the "exceptional and extremely unusual hardship" standard set forth in 8 C.F.R. § 212.7(d).

Lastly, we note that the submitted decisions by the AAO relate to the extreme hardship standard, not the "exceptional and extremely unusual hardship" standard set forth in 8 C.F.R. § 212.7(d).

Accordingly, the applicant failed to demonstrate that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d), and the appeal will be dismissed.

ORDER: The appeal is dismissed.