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



H2



DATE: DEC 30 2011

Office: ATLANTA

FILE:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

f. Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan and is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), to reside in the United States with his U.S. citizen parents and daughter. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen mother.

In a decision dated May 13, 2009, the Field Office Director concluded that the applicant did not establish that a qualifying relative would suffer extreme hardship and his application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the Field Office Director erred in not finding extreme hardship to the applicant's qualifying relatives.

The record contains, among other documentation, a legal brief by counsel for the applicant, evidence of the applicant's entry into the United States on January 9, 1989 as a student, records from the applicant's criminal convictions, psychological assessments of the applicant's mother and father, letters from the applicant's father's physicians, tax returns for the applicant's parents, tax returns for the applicant, baptismal certificate for the applicant, a letter from the applicant's father, a letter from the applicant, a letter from [REDACTED] a letter from [REDACTED] a certificate of marriage for the applicant's parents, the applicant's mother's naturalization certificate, the applicant's father's naturalization certificate, birth certificate for the applicant, birth certificate for [REDACTED] human rights reports on Pakistan, and documentation of the applicant's immigration history in the United States.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(i) Except as provided in clause (ii), any 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, or...

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....

The term "crime involving moral turpitude" (CIMT) is not defined in the Act or the regulations, but has been part of the immigration laws since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (noting that the term first appeared in the Act of March 3, 1891, 26 Stat. 1084). The Board of Immigration Appeals (BIA) has explained that moral turpitude "refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Matter of Franklin*, 20 I&N Dec 867, 868 (BIA 1994), *aff'd*, 72 F.3d 571 (8th Cir. 1995). The BIA has also explained that "[t]he test to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind. An evil or malicious intent is said to be the essence of moral turpitude." *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980) (internal citations omitted).

When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If the statute defines a crime "in which turpitude necessarily inheres," then a conviction under that statute constitutes a crime involving moral turpitude. *Id.*

The record establishes that on August 9, 1995, in the State Court of Cobb County, Georgia, the applicant was convicted of two counts of Theft by Shoplifting, in violation of section 16-8-14 of the Georgia Code. He was sentenced to 12 months confinement to be served on probation and ordered to pay a \$600 fine plus court costs. On October 13, 1997, the applicant was charged with simple assault, criminal trespass, and simple battery against [REDACTED] again in State Court of Cobb County. An order of *Nolle Prosequi* was entered on those charges on December 4, 1997 after the victim chose not to prosecute. Then, on August 14, 1998, in the State Court of Cobb County, the applicant was convicted of Deposit Account Fraud in violation of Georgia Code section 16-9-20(B)(1)(2). The applicant was sentenced to 12 months confinement to be served on probation, fined \$300, and ordered to pay restitution.

Turpitude is inherent in the *mens rea* of the statute of the applicant's Theft by Shoplifting conviction, which states, in pertinent part:

(a) A person commits the offense of theft by shoplifting when he alone or in concert with another person, with the intent of appropriating merchandise to his own use without paying for the same or to deprive the owner of possession thereof or of the value thereof....

Ga. Code Ann. § 16-8-14 (West 2007).

Theft has long been held to be a CIMT. *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966). The Board of Immigration Appeals (BIA) has held that, in order to constitute a CIMT, a conviction for theft must involve a permanent taking. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). In *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the BIA found that a violation of Pennsylvania's retail theft statute reasonably allowed for the presumption that the conduct involved an intent to permanently deprive the owner of their property. That presumption can also similarly be applied to Georgia's Theft by Shoplifting statute. Therefore the applicant's conviction for retail theft constitutes a CIMT. The applicant does not contest this finding.

The applicant's second conviction is for Deposit Account Fraud in violation of Georgia Code section 16-9-20, which states in pertinent part:

- (a) A person commits the offense of deposit account fraud when such person makes, draws, utters, executes, or delivers an instrument for the payment of money on any bank or other depository in exchange for a present consideration or wages, knowing that it will not be honored by the drawee. ...

...

In *Matter of Bart*, 20 I&N Dec. 436 (BIA 1992), the Board of Immigration Appeals held that issuance of a bad check in violation of section 16-9-20(a) of the Georgia Code is a crime involving moral turpitude because Georgia case law clearly establishes that guilty knowledge, as evidenced by an intent to defraud, is an essential element of the offense. Moreover, courts have consistently held that any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), *cert denied*, 383 U.S. 915 (1966). Thus, a conviction under section 16-9-20 is a crime involving moral turpitude. The applicant does not contest this finding.

Section 212(h) of the Act provides, in pertinent parts:

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; or

...

The applicant's last conviction for a crime involving moral turpitude was for activities that took place within the past 15 years. As such, the applicant must show that the denial of his admission would result in extreme hardship to a qualifying relative. The applicant's qualifying relatives in this case are his U.S. citizen parents. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and we then assess whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The applicant has not provided sufficient evidence that [REDACTED] qualifies as his daughter within the definition of INA § 101(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1101(b)(1). See *Matter of Coker*, 14 I&N Dec. 521 (BIA 1974). The specific component of the Act at issue here is section 101(b)(1)(D) ("a child born out of wedlock ... on whose behalf a status ... is sought by virtue of the child to its natural ... father if the father has or had a bona fide parent-child relationship with the person"). In regards to visa petitions, but applicable here, the regulations provide that if a child is born out of wedlock, the father must show that he is the natural father and that a bona fide parent-child relationship was established when the daughter was unmarried and under 21 years of age. 8 C.F.R. § 204.2(d)(2)(iii). Here, the applicant has provided some evidence that he has a parent-child relationship with the child, but he has not provided any evidence that he is her natural father. Moreover, the applicant is not married to the child's mother, so the child does not qualify as a stepchild. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant and the applicant has not met his burden to prove that he is the natural father of his claimed child. See section 291 of the Act, 8 U.S.C. § 1361.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country,

or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

The Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the qualifying relatives are the applicant’s U.S. citizen parents. We must consider whether the qualifying relatives would suffer extreme hardship if they were to remain in the United States without the applicant and if they were to relocate abroad with the applicant. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994).

We will first consider the hardship claimed by the applicant’s U.S. citizen mother and father if they were to remain in the United States without their son. Both parents state that they will experience emotional, physical, and financial hardship if they were to be separated from the applicant.

In regards to financial hardship, there is no evidence in the record of any financial support provided to the applicant’s mother or father by the applicant. In fact, the evidence illustrates that the applicant’s parents are both gainfully employed and that their combined income is reported on their 2009 Federal Income Taxes was \$48,041. The record contains a sampling of the applicant’s

parent's household expenses, but not enough information is provided to make a conclusion that either of the applicant's parents would suffer financial hardship in his absence. In his psychological assessment, [REDACTED] reports that the applicant's father relayed to him that he will "probably have to stop working next year due to his health problems and age," but the letters provided from the applicant's father's physicians do not state that he has a disability that prevents him from working now or in the future. The letters from the applicant's father's physician report that he is in stable health. The AAO recognizes that the applicant's parents are of advanced age, but no information is provided as to their retirement savings or other means of financial support should they no longer work. Moreover, there is no evidence of physical and emotional support provided by the applicant to his mother or father. The applicant's parents state that they rely on him for emotional, physical, and financial support, but they provide no independent evidence of that support. Additionally, they do not explain why their other adult son who also appears from the record to live in the same community cannot provide that support.

Although the psychologist states in his assessment that the applicant's parent's anxiety and depression is severe, there is no evidence that their condition has affected their ability to work or carry on their daily activities. [REDACTED] who is not a medical doctor, states that the applicant's mother reports that she is feeling numbness in her extremities, wobbliness in her legs, indigestion, discomfort in her abdomen, dizziness, and lightheadedness, and pounding in her chest, but there is no evidence that the applicant's mother has seen a physician in regards to her complaints. The applicant's mother also reported to [REDACTED] that she fears that she will not be able to adequately survive without the assistance of the applicant, but no details are provided as to what assistance the applicant provides, how frequently he provides assistance, why that assistance is crucial to the applicant's mother and why it cannot be provided by the applicant's brother. Additionally, [REDACTED] states that the applicant's mother's depression and anxiety are directly related to her fears that the applicant will be removed to Pakistan, but no course of treatment is recommended for the applicant's mother. It is not stated why the applicant's mother is unable to seek counseling or other medical assistance for her condition and why that assistance would not lessen the impact of her fear.

In regards the psychological condition of the applicant's father, [REDACTED] reports that he is experiencing both emotional and physical manifestations of clinical depression and anxiety. He goes on to state that from the applicant's father's self-reporting of his symptoms, there are signs and symptoms that he has suffered from panic attacks. There is no evidence, however, that the applicant's father has ever sought medical or psychological assistance for his symptoms prior to the evaluation prepared for the waiver application. [REDACTED] states that the applicant's father's "extreme anxiety" and "severe depression" are directly related to his fears that the applicant will be removed to Pakistan. No course of treatment is recommended for these conditions described as "extreme" and "severe" and no evidence is provided that these conditions have impacted the applicant's father's ability to work or carry on his daily activities. The AAO gives due consideration to the opinions of the psychologist, yet the assessments generated do not show that, should the present application be denied, the applicant's parents will experience hardship that is distinguishable from the common hardship experienced when a close family member is deemed inadmissible. The AAO recognizes the significance of family separation as a

hardship factor, but concludes that the hardship described by the applicant and his parents and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and, even when considered in the aggregate, does not rise to the level of extreme hardship.

We must also consider whether either of the applicant's U.S. citizen parents would suffer extreme hardship should they relocate to Pakistan with the applicant. The applicant has submitted evidence of the country conditions in Pakistan, a psychological assessment stating the reasons why relocation to Pakistan would cause psychological hardship to his parents, his parents' religious affiliation, and his parents' long-time residence and employment in the United States. In particular, the evidence illustrates that there is significant religiously-motivated violence in Pakistan against Christians, which the applicant's parents are. Moreover, in his psychological assessment, [REDACTED] states that the applicant's parent's psychological condition would worsen if they were to move to Pakistan due to the loss of their longtime employment, contact with their other children and grandchildren, and the fear that they would experience hardship due to the violence directed at Christians in Pakistan. Due to the long-time residence of the applicant's parents outside of Pakistan, their religious affiliation, their medical needs, and the detailed account of the psychological trauma that they would face if they had to return to Pakistan, there is evidence that both of the applicant's parents would suffer extreme hardship if they were to relocate there.

Although the applicant has demonstrated that the qualifying relatives would experience extreme hardship if they relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship. Although the AAO acknowledges that the applicant's U.S. citizen parents will suffer emotional hardship, the record does not establish that the hardship either one of them faces rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under section 212(h) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.