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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 07 2011

IN RE:

Applicant:



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:

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.

Thank you,

for Perry Rhew
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 sustained.

The applicant is a native and citizen of Iran who was found to be 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. 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 her 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.

Counsel states that new evidence submitted on appeal demonstrates extreme hardship to a qualifying relative.

We will first address the finding of inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing a crime involving moral turpitude.

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

- (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 (Board) 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.)

On March 6, 1990 and April 10, 2003, the applicant was convicted of theft in California. The judge ordered that the applicant pay a fine and serve 12 months probation for the first conviction. For the second conviction, the applicant was ordered to pay a fine and was placed on summary probation for 24 months.

To determine if a crime involves moral turpitude, the Ninth Circuit Court of Appeals first applies the categorical approach. *Nunez v. Holder*, 594 F.3d 1124, 1129 (9th Cir. 2010) (citing *Nicanor-Romero v. Mukasey*, 523 F.3d 992, 999 (9th Cir.2008)). This approach requires analyzing the elements of the crime to determine whether all of the proscribed conduct involves moral turpitude. *Nicanor-Romero, supra* at 999. In *Nicanor-Romero*, the Ninth Circuit states that in making this determination there must be "a realistic probability, not a theoretical possibility, that the statute would be applied to reach conduct that did not involve moral turpitude. *Id.* at 1004 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability can be established by showing that, in at least one other case, which includes the alien's own case, the state courts applied the statute to conduct that did not involve moral turpitude. *Id.* at 1004-05. *See also Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008) (whether an offense categorically involves moral turpitude requires reviewing the criminal statute to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to conduct that is not morally turpitudinous).

If the crime does not categorically involve moral turpitude, then the modified categorical approach is applied. *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1161 (9th Cir. 2009). This approach requires looking to the "limited, specified set of documents" that comprise what has become known as the record of conviction—the charging document, a signed plea agreement, jury instructions, guilty pleas, transcripts of a plea proceeding and the judgment—to determine if the conviction entailed admission to, or proof of, the necessary elements of a crime involving moral turpitude. *Id.* at 1161 (citing *Fernando-Ruiz v. Gonzalez*, 466 F.3d 1121, 1132-33 (9th Cir. 2006)).

At the time of the applicant's conviction, Cal. Penal Code § 484(a) provided, in pertinent part:

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. . . .

The Ninth Circuit Court of Appeals in *Castillo-Cruz v. Holder* determined that petty theft under Cal. Penal Code § 484(a) requires the specific intent to deprive the victim of his or her property permanently, and is therefore a crime categorically involving moral turpitude. 581 F.3d 1154, 1160 (9th Cir. 2009).

In view of the holding in *Castillo-Cruz*, we find that the applicant's convictions for theft constitute crimes involving moral turpitude, rendering her inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section 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 in this case is the applicant's U.S. citizen 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 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).

However, though hardships may not be extreme when considered abstractly or individually, 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 rendering this decision, the AAO will consider all of the evidence in the record such as birth certificates, medical records, letters, real estate documents, income tax records, U.S. Department of State reports, the U.S. Commission on International Religious Freedom press release, newspaper articles, and other documentation.

The applicant’s daughter states in the letter dated March 26, 2008 that she will experience extreme hardship if her mother is not admitted to the United States. She conveys that her parents initially left Iran due to fears of religious persecution, and that she is worried that the Iranian government will persecute her because she is Jewish and a citizen of the United States. The applicant’s daughter expresses anxiety about her safety in living in a male-dominated Iranian society.

The applicant’s daughter also indicates in her letter that her mother has type II diabetes and is undergoing clinical tests that are unavailable in Iran. She states that her mother also receives treatment for diabetic retinopathy that is unavailable in Iran. The applicant’s daughter contends that even if treatment is available, medical care will be denied to her mother because her mother is Jewish. The applicant’s daughter further states that untreated diabetic retinopathy may lead to blindness. The applicant’s daughter maintains that if she did not join her mother in Iran, her mother will probably be hospital bound and blind.

Moreover, the applicant’s daughter states that she works at a juvenile detention camp with mental health professionals and will not be able to continue such work in Iran because of her unfamiliarity with the Farsi language and due to the lack of employment opportunities in Iran.

Finally, the applicant's daughter states that she was born and raised in the United States, and is an only child and that her father recently died and that her mother, who has lived here for 25 years, is her remaining family member. The applicant's daughter conveys that she is single and has no children. She describes having a close relationship with her mother, with both of them depending on each other. The applicant's daughter contends that in the United States she is financially dependent on her mother for the mortgage and other household expenses. She conveys that she intends to attend graduate school for social work.

The record contains medical records for the applicant's mother, which indicate that she receives treatment for diabetes, and required urgent treatment for diabetic retinopathy. [REDACTED] states in a letter dated January 31, 2008, that the applicant's mother was a participant in the ACCORD study for diabetic retinopathy, and that the disease if unattended could lead to blindness.

Further, the record contains [REDACTED] letter dated March 11, 2008, in which he states that the applicant's mother is a practitioner of the Jewish religion. In addition, [REDACTED], the director [REDACTED] states in the letter dated March 10, 2008 that his organization has been resettling refugees from Iran in the last 30 years, and that they "continue to flee persecution because conditions for Iranian Jews remain very difficult."

In addition, we observe that the travel warning states that "[s]ome elements of the Iranian regime and the population remain hostile to the United States. As a result, American citizens may be subject to harassment or arrest while traveling or residing in Iran." U.S. Department of State, Bureau of Consular Affairs, Travel Warning (January 3, 2008). The warning indicates that minority religious and ethnic groups continue to be repressed by the Iranian regime.

Moreover, the submitted U.S. Department of State Country International Religious Freedom Report for 2007 states that the Iranian government "promoted and condoned anti-Semitism in state-media and hosted a Holocaust denial conference during the reporting period." U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *International Religious Freedom Report – 2007*, 4 (September 14, 2007). Furthermore, the report conveys that the government has anti-Israel policies and anti-Semitic rhetoric, and that the perception of radical Muslims is that all Jewish citizens support Zionism and the state of Israel, "which created a hostile atmosphere for Jews" in Iran. *Id.* at 6. We note that the report states that "most Muslim conservatives will not eat food prepared by Jews." *Id.* at 7.

Lastly, the U.S. Department of State Country Reports on Human Rights Practices – 2006 for Iran states that the size of the Jewish community varied from 15,000 to 30,000, and that the "government's anti-Israel stance . . . and the perception among many citizens that Jewish citizens supported Zionism and Israel, created a threatening atmosphere for the community." U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2006: Iran*, 10 (March 6, 2007). Throughout the year, anti-Semitism cartoons "depicting demonic and stereotypical images of Jews along with Jewish symbols" were published. *Id.* Anti-Jewish and anti-Israel demonstrations were held in [REDACTED] following magazine photos of synagogues draped in United States and Israeli flags that were claimed to be in Tehran and Shiraz,

when they were in fact outside the country. *Id.* at 11. In addition, the report conveys describes discrimination against women in Iran such as requiring appropriate Islamic covering, honor killings, the value of their testimony, and their representing only 11 percent of the workforce. *Id.* at 14.

The stated hardship factors in the instant case are that of the financial and emotional impact to the applicant's daughter if she joins her mother to live in Iran. We find that the applicant's daughter's concern about her safety due to anti-Semitism and hostility toward American citizens is supported by the evidence cited above. Furthermore, we find that the applicant's daughter's anxiety about obtaining employment in Iran because of her unfamiliarity with the Farsi language is consistent with submitted information of Iran's high unemployment. Thus, we find that when these unique hardship factors are considered together, they demonstrate extreme hardship to the applicant's daughter.

The applicant's daughter asserts that she has a close relationship with her mother, and that she would be distressed if her mother lived in Iran because her mother is Jewish and has health problems, which the AAO acknowledges is substantiated by medical records. In view of the U.S. Department of State reports and travel warning about the hardships that members of the Jewish community and women experience in Iran, we find that the applicant's daughter is likely to experience greater than normal emotional hardship if she remains in the United States while her mother lives in Iran, after having lived in the United States for 25 years.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301.

The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the criminal convictions of theft in 1990 and 2003.

The favorable factors are the extreme hardship to the applicant's daughter, and the letter by the applicant's daughter commending her mother's character. In addition, it has been eight years since the applicant's most recent criminal conviction in 2003. The AAO finds that the crimes committed by the applicant are serious in nature; nevertheless, when taken together, we find 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained.