

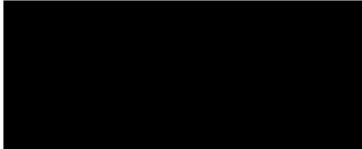
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **NOV 14 2011** Office: ATHENS, GREECE FILE:

IN RE: Applicant:

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,

Perry Rhew
Chief, Administrative Appeals Office

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

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 reside in the United States with his U.S. citizen wife.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the waiver application accordingly. *Decision of the Field Office Director*, dated February 18, 2009.

On appeal, counsel for the applicant asserts that the applicant's wife will suffer extreme hardship if the present waiver application is denied. *Statement from Counsel in Form I-290B*, dated March 17, 2009.

The record contains, but is not limited to: briefs from counsel; copies of correspondence from the applicant to his wife; documentation relating to the applicant's wife's travel to Syria; photographs of the applicant, his wife, and their family members; medical documentation for the applicant's wife and father-in-law; statements from the applicant, the applicant's wife, the applicant's step-daughter, the applicant's sister-in-law, and a friend of the applicant's wife; reports on conditions in Syria; and documentation relating to the applicant's criminal conviction. The entire record has been reviewed in rendering a decision on the appeal.

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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists

of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record shows that on June 20, 1999, the applicant was convicted in Syria of Described Theft under Article 625 of the Syrian Penal General Code. He was sentenced to three years of imprisonment with hard labor, but his sentenced was reduced to one year due to extenuating circumstances. The applicant has not provided the text of the foreign statute under which he was convicted.

The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person’s property. *See Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973)(“Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended.”). As the applicant has not provided the Syrian criminal statute under which he was convicted, the AAO is unable to determine whether it may have been violated by either permanently or temporarily depriving another person of the right or benefit of that person’s property.

However, the applicant has not presented, and the AAO is unaware of any prior case in which a conviction has been obtained under Article 625 of the Syrian Penal General Code for conduct not involving moral turpitude. In accordance with [REDACTED], the AAO will review the record to determine if the statute was applied to conduct not involving moral turpitude in the applicant’s own criminal case. The applicant submitted a record of his conviction that provides a detailed description of his conduct. This document states that the applicant stole a set of keys to an individual’s home, had a second set made for himself, returned the original keys, then used the second set to enter and steal jewelry and cash. The applicant admitted to the theft, and the fact that he sold a gold bracelet through a third person and collected the proceeds for himself. The fact that the applicant sold the stolen bracelet reflects that he intended to keep the property, or its equivalent value, permanently and not return it to the rightful owner. As the applicant intended to permanently take the property, his conviction under Article 625 of the Syrian Penal General Code was for a crime involving moral turpitude. Accordingly, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and he requires a waiver under section 212(h) of the Act.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such

subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

(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 . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

In a statement dated April, 14, 2009, the applicant's wife states that she has been in a state of shock and depression since the applicant's waiver application was denied. She explains that she and the applicant have been in a committed relationship since 2001, and that they regularly communicate through email and telephone. She adds that she depends on the applicant for emotional support. She states that her father has medical problems for which he has a home attendant, and that she spends her weekends with him assisting him with his finances and medical care. The applicant's wife expresses that the applicant's support has helped her cope with her own health problems, including a lump in her breast and two uterine fibroids. She adds that her conditions are not life-threatening, but that they cause her great concern and discomfort. The applicant's wife indicates that she spends approximately \$50 each month on telephone charges to speak with the applicant, but the high rates only allow them to speak for approximately two hours each month.

The applicant's wife further states that she would endure severe and extreme hardship should she join the applicant in Syria, as she would not be able to care for her father, she would lose needed medical coverage currently provided by her employer, she would have difficulty finding employment in Syria, and she would face safety risks there.

In a statement dated July 7, 2008, the applicant stated that he and his wife are experiencing hardship due to denial of his application. He added that he and his wife are Christians, and that it is hard to live in Syria as minorities.

In a brief dated April, 14, 2009, counsel states that the applicant's wife immigrated to the United States from Ecuador in 1996 and that she no longer has ties there or in Turkey where she and the applicant were married. Counsel indicates that all of the applicant's wife's family members reside in the United States, including her daughter, siblings, and parents. Counsel asserts that the applicant's wife would fear for her safety in Syria due to conditions there. Counsel adds that the applicant's wife would suffer professionally and economically should she reside in Syria. Counsel asserts that the applicant's wife would lack access to adequate medical care in Syria. Counsel also provides that the applicant's wife is depressed due to separation from the applicant, and that the prospect of permanent separation is unbearable.

Upon review, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his wife, as required by section 212(h) of the Act.

The AAO recognizes that the applicant's wife would suffer significant hardship should she relocate to Syria. The U.S. Department of State issued a Travel Warning for U.S. citizens traveling in Syria on April 25, 2011, in which it "urge[d] U.S. citizens to depart immediately while commercial transportation is readily available." U.S. Department of State Travel Warning: Syria, dated April 25, 2011. The warning adds that "[g]iven the uncertainty and volatility of the current situation, U.S. citizens who must remain in Syria are advised to limit nonessential travel within the country. U.S. citizens not in Syria should defer all travel to Syria at this time." *Id.* The warning states that "[s]ince March 2011, demonstrations throughout Syria have been violently suppressed by Syrian security forces, resulting in hundreds of deaths." *Id.* It is evident that current unrest in Syria poses a significant threat to the applicant's wife's security should she reside there.

The applicant's wife would face other hardships should she relocate to Syria, including the loss of her employment and health insurance, separation from the doctors who provide her present care, the inability to continue to assist her father, and separation from her family and community in the United States. Considering all of the elements in aggregate, the applicant has shown that residence in Syria would result in extreme hardship for his wife.

However, the applicant has not shown that his wife will suffer extreme hardship should she remain in the United States. It is noted that the applicant and his wife have never resided together, as she has resided in the United States and he has resided in Syria for the duration of their relationship. They were married in 2007, and the record supports that their in-person visitation has been limited to three visits abroad for a total of approximately 70 days. The AAO acknowledges that the applicant's

wife expresses that she has a close bond with the applicant and they wish to reside together as husband and wife. Yet, as they have never resided together, remaining separated does not constitute a change in circumstances for his wife or a loss of present support.

The applicant has not asserted that his wife relies on him for economic contribution, and in fact his wife stated that she occasionally sends funds to him and his family. The applicant has not provided financial documentation for his wife. While she indicates that high telephone charges limit her ability to speak to the applicant by phone, the applicant has not established his wife's economic circumstances.

The AAO has carefully examined the medical documentation for the applicant's wife. While the record supports that she has medical concerns that require monitoring from medical professionals, the provided documentation does not show that she suffers conditions that impact her ability to perform common functions or require assistance from others. It is evident that the presence of loved ones is a comfort in times of illness, yet the record shows that the applicant's wife benefits from the support of other family members in the United States. However, due consideration is given to the emotional impact the applicant's absence has on his wife as she meets her health challenges.

The applicant expressed concern for his and his wife's experience in Syria as a result of being Christian minorities. However, the applicant has not indicated that he or his family have encountered problems in Syria. The record lacks sufficient explanation or assertions in order for the AAO to assess the emotional impact the applicant's continued residence in Syria would have on his wife.

Based on the foregoing, the applicant has not shown that his wife would suffer extreme hardship should she continue to reside in the United States. Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she 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 to the qualifying relative in this case. Thus, the applicant has not shown that he is eligible for consideration for a waiver under section 212(h) of the Act. As the applicant has failed to establish the requisite extreme hardship, we do not reach the issue of whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the applicant bears the burden of proof to establish his eligibility. *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.