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



**U.S. Citizenship  
and Immigration  
Services**

[Redacted]

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Date: OCT 03 2011 Office: FRESNO, CALIFORNIA

FILE: [Redacted]

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:

[Redacted]

**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 Field Office Director, Fresno, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Syria 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 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 declares that the director erred in finding that the evidence of hardship to the applicant's wife and mother is typical. Counsel states that the applicant's U.S. citizen spouse has severe physical and psychological conditions (osteoarthritis, fibromyalgia, gastrointestinal and bronchial disorders, diabetes, bipolar disorder, anxiety disorder, major depression with psychosis), and that the applicant provides support to his wife. Counsel avers that the applicant's wife takes medication to function normally and that stress affects her mental health. Counsel indicates that the applicant's wife had a tragic childhood and other than the applicant, her two sons, and the baby they are expecting in the fall, has no other family. Counsel states that the applicant and his wife emotionally supported each other through a miscarriage. Further, counsel maintains that the applicant is the sole provider for the family because the applicant's wife cannot work due to her medical conditions. Counsel maintains that the applicant takes care of their children when his wife is sick or hospitalized. Lastly, counsel avers that the applicant's lawful permanent resident mother depends on the applicant for care such as taking her to the doctor, translating, and lifting her for showering, dressing, and eating.

In addition, counsel avers that the applicant is a Palestinian refugee and that his wife would not have access to medical care in Syria. Counsel maintains that the applicant's wife has a shared custody arrangement with her son, who would not be permitted to leave the United States. Counsel avers that the applicant's only tie to Syria is an abusive father. Counsel declares that the applicant grew up in a Palestinian refugee camp and traveled to the United States on a Refugee Travel Document from Syria, and is stateless with an unknown status in Syria. Counsel maintains that the applicant's mother is an asylee from Syria and has already demonstrated that she cannot return without enduring persecution. Counsel avers that the U.S. Department of State issued a travel warning about Syria.

We will first address the finding of inadmissibility 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 December 23, 2002, the applicant was arrested for the offense of bank larceny under 18 U.S.C. § 2113(b) in California. The applicant pled guilty to the offense, and on June 22, 2006 he was sentenced to a term of probation for 24 months and to perform community service.

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 (9<sup>th</sup> Cir. 2010) (citing *Nicanor-Romero v. Mukasey*, 523 F.3d 992, 999 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006)).

18 U.S.C. § 2113(b) provides, in pertinent part:

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding \$1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than ten years, or both . . .

The Board 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 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended.").

The AAO notes that the Ninth Circuit Court of Appeals has stated that subsection (b) of 18 U.S.C. § 2113 defines the common law offense of larceny. *U.S. v. Bosque*, 691 F.2d 866, 868 (9<sup>th</sup> Cir. 1982); *U.S. v. Urrutia*, 897 F.2d 430, 432-433 (9<sup>th</sup> Cir. 1990); *U.S. v. Sellers*, 670 F.2d 853, 854 (9<sup>th</sup> Cir. 1982). Further, in *Sellers*, *supra*, the Ninth Circuit stated that common law larceny requires a taking of property from the possession of another without his consent and with the intent to deprive the victim of his property permanently. 670 F.2d at 854 (citing *Bennett v. U.S.*, 399 F.2d at 740, 742-743; *People v. Earle*, 222 Cal.App.2d 476, 478, 35 Cal.Rptr. 265 (1963)). *See also W. LaFave & A. Scott*, Criminal Law 618, 622 (1972); R. Perkins, Perkins on Criminal Law 238-39 (2d ed. 1969). Thus, we find that the crime of bank larceny under 18 U.S.C. § 2113(b) categorically involves moral turpitude, which renders the applicant 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-Moralez*, 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 for the applicant's wife and mother, letters, income tax records, U.S. Department of State reports, information about healthcare in Syria and about Palestinian refugee border camps, the applicant's travel document, photographs, invoices, greeting cards, and other documentation.

In the declaration dated February 9, 2009, the applicant's wife stated that she was abandoned at a young age by her mother and was abused by her father. She declared that she has a close relationship with her husband and that they weathered many difficult times together such as his having to take her many times to the hospital's emergency room for gastrointestinal problems bronchitis, and bronchial asthma. She stated that she was diagnosed with bipolar disorder, major depression with psychotic episodes, severe anxiety, obsessive compulsive disorder and possible schizophrenia. The applicant's wife averred that these conditions make her life difficult because she has frequent panic attacks and sometimes hallucinations. She maintained that she cannot live in the United States without her husband because she cannot maintain her health alone and cannot take care of her children. She declared that her husband understands her illnesses and what to watch for and how to deal with her when she is not coherent. The applicant's wife asserted that her husband makes sure she takes the right medication and correct dose and takes care of their children. The applicant's wife averred that the applicant is close to her son. Further, she declared that she and the applicant have a child, who was born on February 12, 2008.

The AAO observes that the travel warning states that "[s]ince March 2011, demonstrations throughout Syria have been violently suppressed by Syrian security forces, resulting in hundreds of deaths and injuries and thousands of detentions." Furthermore, it conveys that the civil unrest is attributed to external influences and thus there has been an increase of anti-foreigner sentiment. In view of the unpredictability and volatility of the situation U.S. citizens in Syria are urged by the U.S. Department of State to depart immediately, and those who must remain are advised to limit travel within the country. U.S. Department of State, Bureau of Consular Affairs, Travel Warning (August 5, 2011).

Thus, in view of the applicant's wife's history of serious mental and physical health problems such as bipolar disorder, depression, severe anxiety, diabetes, and pulmonary disease, coupled with the severe mental trauma that she will endure in raising her young children in Syria, where there is grave risk to their physical and mental health due to civil unrest and widespread violence, we find the record establishes that the applicant's wife and young children will suffer extreme mental and physical hardship if they joined the applicant to live in Syria.

With regard to hardship associated with separation from the applicant, medical records reflect that the applicant's wife has a history of the following: diabetes, type II that has been treated with insulin; gastrointestinal disease, including peptic ulcer disease; pulmonary disease, including asthma; fibromyalgia; anxiety; panic attacks; depression; bipolar disorder; arthritis and arthralgias; and obsessive-compulsive disorder. We note that the birth certificates in the record indicate that the applicant and his wife expect the birth of a child on August 3, 2009. The record further shows that

they have a son, who was born on February 12, 2008, and that the applicant's stepson was born on January 3, 1997. We note that on April 5, 2005, the applicant's wife was admitted to the hospital for physical and mental problems including a psychotic episode. We observe that the discharge summary reflected that the applicant's wife has had an undefined psychiatric illness for a long time for which she had been on multiple medications, and that she stopped all of her treatment. Because the applicant's wife refused to be committed to mental health and had acute psychosis while in the hospital, the applicant was to administer her medications to prevent suicidal attempts. Documentation in the record such as the tenant income certification dated April 1, 2008, and income tax records for 2008 reflect the applicant was at that time the principal financial provider for his family.

Lastly, we take note that the applicant's mother conveys in her undated letter that she has a close bond with the applicant and depends on him for translation and running errands, and for financial assistance. She indicates that the applicant helped in raising his sister and that he now takes her to school and has his wife pick her up. The applicant's mother avers that she does not drive due to health problems and that she has been taken care of by the applicant when she is unable to stand on account of osteoporosis.

The stated hardships to the applicant's wife and children are emotional and financial in nature. The applicant's wife averred that she and her children have a close relationship with the applicant, and that she requires his emotional and financial support. In view of the evidence of the applicant's wife's serious physical and mental problems and the emotional and financial dependence that her children have on the applicant, we find that when the hardship factors are considered together, they demonstrate extreme hardship to the applicant's wife and children if they remain in the United States without him.

The applicant in this case therefore establishes extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act.

In *Matter of Mendez-Moralez*, 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 factor in the instant case is the applicant’s criminal conviction for bank theft in 2002. The favorable factors are the extreme hardship to the applicant’s wife and children if the waiver is denied, and the passage of eight years since his criminal conviction. When we consider and balance the favorable factors against the adverse factor, we find that the favorable factors outweigh the adverse factor. Therefore, we find that the grant of relief in the exercise of discretion is warranted in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained and the waiver will be approved.

**ORDER:** The appeal is sustained.