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



U.S. Citizenship
and Immigration
Services



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Date: **JUL 10 2012**

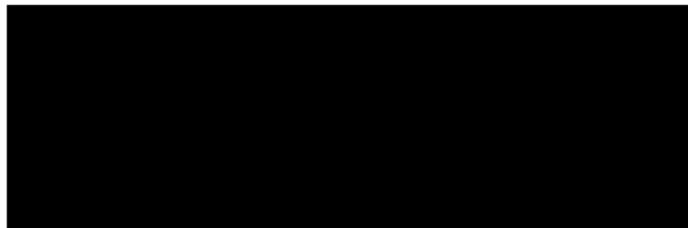
Office: NEWARK, NJ

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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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew

Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Egypt 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 in order to remain in the United States with his U.S. citizen spouse and child.

In a decision, dated August 31, 2009, the field office director found that the applicant failed to establish that the hardship his spouse would suffer as a result of his inadmissibility rises to the level of extreme hardship. The application was denied accordingly.

On appeal, counsel submits evidence regarding the birth of the applicant's U.S. citizen son, medical documentation regarding the applicant's son, and a psychological evaluation of the applicant's wife. In his brief, counsel states that this new evidence clearly establishes extreme hardship to the applicant's spouse and child.

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 (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.)

In determining whether a crime involves moral turpitude, the Third Circuit Court of Appeals, per *Jean-Louis v. Holder*, 582 F.3d 462 (3rd Cir. 2009), makes a categorical inquiry, which consists of looking “to the elements of the statutory offense . . . to ascertain that least culpable conduct hypothetically necessary to sustain a conviction under the statute.” *Id.* at 465-66. The “inquiry concludes when we determine whether the least culpable conduct sufficient to sustain conviction under the statute “fits” within the requirements of a CIMT.” *Id.* at 470.

However, if the “statute of conviction contains disjunctive elements, some of which are sufficient for conviction of [a CIMT] and other of which are not . . . [an adjudicator] examin[es] the record of conviction for the narrow purpose of determining the specific subpart under which the defendant was convicted.” *Id.* at 466. This is true “even where clear sectional divisions do not delineate the statutory variations.” *Id.* In so doing, an adjudicator may only look at the formal record of conviction. *Id.*

The record indicates that on April 24, 2003, the applicant was charged with Identification Fraud under 18 U.S.C. §§ 1028(a)(1), (b)(1)(A)(ii), (c)(3)(a). On August 27, 2003, he was convicted in the U.S. District Court for the District of Virginia and sentenced to time served (4 months) and two years probation.

At the time of the applicant’s conviction, 18 U.S.C. § 1028 provided, in pertinent part:

Fraud and related activity in connection with identification documents and information

(a) Whoever, in a circumstance described in subsection (c) of this section--

(1) knowingly and without lawful authority produces an identification document or a false identification document;

...

shall be punished as provided in subsection (b) of this section

(b) The punishment for an offense under subsection (a) of this section is—

(1) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 15 years, or both, if the offense is—

(A) the production or transfer of an identification document, authentication feature, or false identification document that is or appears to be—

...

(ii) a birth certificate, or a driver's license or personal identification card;

...

(c) The circumstance referred to in subsection (a) of this section is that—

...

(3) either—

(A) the production, transfer, possession, or use prohibited by this section is in or affects interstate or foreign commerce, including the transfer of a document by electronic means; or ...

As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the field office director.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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 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, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and child are the qualifying relatives 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 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.

The record includes: counsel's brief, a psychological evaluation from a [REDACTED] medical documentation concerning the applicant's son, and a statement from the applicant's spouse.

In his brief counsel states that the applicant's spouse and child would suffer emotional hardship as a result of relocating to Egypt and as a result of separation. The psychological evaluation performed by [REDACTED] reports that the applicant's spouse is already becoming anxious and depressed as a result of her fear that her son will be separated from his father. [REDACTED] diagnosed the applicant's spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood. He states that separating the applicant's spouse from the applicant will exacerbate her depressive symptomology.

Counsel states further that the applicant's spouse was born in the United States and needs to stay in the United States close to her family so that they can help her with her son. Counsel also states that the applicant's son suffers from medical problems including: impaired hearing, an enlarged kidney, and a hole in his heart. He states that the applicant's son is being followed by a pediatrician and would not be able to find comparable care in Egypt.

The AAO finds that the applicant's spouse's statement supports counsel's statements, but that other documentation in the record either fails to support these statements and/or do not indicate that the hardship involved rises to the level of extreme hardship.

Medical documentation in the record indicates that the applicant's son failed his initial hearing test, but on a follow-up visit he passed the hearing test. The record does not currently show that the applicant's son suffers from any hearing impairment. The record does indicate that at 2 months old doctors were still following the applicant's son's kidney and heart, but the records do not indicate that these issues would continue to be problems through the child's infancy. Moreover, the record contains no documentation to support any claims regarding country conditions in Egypt or the applicant's family's ability to access medical treatment in Egypt for their son.

Based on the current record, the AAO cannot find that the applicant's spouse and/or child would suffer extreme hardship as a result of the applicant's inadmissibility. The record contains no documentation to support the claims made regarding the country conditions in Egypt and that the applicant's spouse and/or child would suffer extreme hardship upon relocation. The record also fails to detail the hardship that would be experienced in the absence of the applicant. We acknowledge the psychological evaluation submitted and that the applicant's spouse is suffering from anxiety and depressed mood, but this does not show that this emotional hardship rises to the level of extreme or is above and beyond what spouses would feel when facing separation from each other. The record also fails to include any statements from the applicant's spouse's family to support her statements regarding reliance on them in regards to caring for her son. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Therefore, the AAO finds that in this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse and child, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility

under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *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.