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



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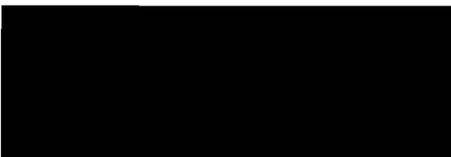
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**MAR 19 2012**

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,

*for*   
Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Lebanon 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 been convicted of crimes involving moral turpitude. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and son.

The field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Field Office Director*, dated November 27, 2009.

On appeal, counsel for the applicant asserts that the applicant's family members will suffer extreme hardship should the present waiver application be denied. *Statement from Counsel on Form I-290B*, dated December 16, 2009.

The record contains, but is not limited to: a statement from counsel; statements from the applicant and his wife; documentation relating to the applicant's taxes and business; tax records for the applicant's wife; a copy of the applicant's son's birth certificate; documentation relating to the applicant's family's banking and expenses; and documentation regarding the applicant's criminal convictions. It is noted that counsel indicated on Form I-290B that he would provide a brief and/or additional evidence within 30 days. However, as of the date of this decision, the AAO has received no further correspondence or documentation from counsel or the applicant, and the record is deemed complete. The entire record was reviewed and considered in rendering this decision.

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 the applicant was convicted of larceny in Michigan under M.C.L.A. § 750.356 for an act of retail theft that he committed on or about September 12, 1997. He was also convicted of retail fraud in Michigan under M.C.L.A. § 750.356d for his conduct on or about February 12, 1999. The field office director determined that these offenses constitute crimes involving moral turpitude, and that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The record does not show this finding to be in error, and the applicant does not contest his inadmissibility on appeal. 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, 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 wife and son 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-Moralez*, 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 November 3, 2009, the applicant’s wife asserts that she and their son will suffer hardship should the applicant not obtain a waiver of his inadmissibility. She explains that she suffered complications from her pregnancy, and that the applicant cared for her during that time. She indicates that the applicant participates in caring for their two-year-old son. She provides that she and their son rely on the applicant for support, and that their son deserves to have the presence, guidance, and security of both parents. The applicant’s wife adds that she wishes to obtain advanced education and training, and that her plans will have to be deferred if the applicant resides outside the United States. She asserts that she will be compelled to seek public assistance without the applicant’s financial support.

In a statement dated November 3, 2009, the applicant expresses remorse for his criminal acts, and he asserts that he has lived a responsible life over the last 10 years. He states that he and his wife have plans for themselves and their son, and he wishes to follow through on them.

Upon review, the applicant has shown that his wife will experience extreme hardship should she and their son relocate to Lebanon to maintain family unity. As referenced by counsel, the United States Department of State issued a travel warning for Lebanon on October 12, 2011, urging U.S. citizens to avoid all travel to Lebanon due to current safety and security concerns. The Department of State references an ongoing threat of kidnappings and terrorist attacks in Lebanon, including U.S. citizens as targets. It is evident that the applicant’s wife would face substantial security concerns and related emotional hardship should she return to Lebanon, despite the fact that she is a native of the country and resided there until the age of 12. The AAO acknowledges other elements of hardship should the applicant’s wife and son relocate to Lebanon, including an interruption of their economic stability, loss of access to academic and employment opportunities, and separation from their community and country of citizenship.

However, the applicant has not shown that his wife or son will suffer extreme hardship should they remain in the United States without him. The applicant and his wife have been married for approximately 3 years, since February 5, 2009, and the record lacks information regarding their relationship or bond prior to that time. The AAO acknowledges that the applicant’s wife valued support she received from the applicant during her pregnancy over two years ago, yet the record does not show that she has unusual continuing emotional or physical needs. It appears that she and their son are both healthy and have no uncommon medical needs. The applicant has not shown that

his wife is unable to work and earn sufficient income to meet her and their son's financial needs. While her 2008 federal tax return reflects that she earned a total of \$5,105, the AAO is not persuaded that this represents her current, complete earning capacity or that she would require public assistance in the applicant's absence. The applicant has not presented any information regarding his wife's academic training or work history that reflects the employment options available to her. The applicant has not presented any unusual circumstances relating to difficulties his son will experience should they reside apart. The AAO acknowledges that the separation of family members due to inadmissibility often creates significant psychological difficulty, and that the applicant's wife and son will face substantial emotional hardship. However, based on the record, the applicant has not shown that the totality of difficulties they would face is uncommon and rises to an extreme level.

Counsel asserts that the applicant's crimes were minor offenses that occurred a long time ago, and that the level of hardship required to show extreme hardship should be lessened. However, counsel does not provide any support for this assertion. Section 212(h) of the Act does not contain a provision that alters the standard of extreme hardship according to the gravity of the criminal offense that led to inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. While the gravity of an offense may be properly considered in determining whether an applicant warrants a favorable exercise of discretion, such discretionary balancing is not reached where an applicant has not shown extreme hardship to a qualifying relative. As discussed above, the applicant has not first shown that his wife or son will suffer extreme hardship as contemplated by section 212(h) of the Act, and no purpose is served in discussing whether he warrants a favorable exercise of discretion.

In proceedings regarding a 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.