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



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



H<sub>2</sub>

DATE: **SEP 24 2012**

Office: NEW YORK, NY

FILE: 

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 with the field office or service center that originally decided your case by filing a 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,

f. Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of France 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 is married to a U.S. citizen. He 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.

The District Director concluded that the applicant had failed to establish that the bar to his admission would result in extreme hardship for his spouse and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *District Director's Decision*, dated November 2, 2011.

On appeal, counsel asserts that the applicant's will experience extreme hardship if the waiver application is denied and submits additional evidence in support of the hardship claim. *Notice of Appeal or Motion*, dated November 29, 2011.

The record includes, but is not limited to, statements from the applicant, his spouse and his mother-in-law; statements from friends and business acquaintances of the applicant; country conditions information on racism in France; medical and psychological evaluations of the applicant's spouse; tax records for the applicant and his spouse; and court records relating to the applicant's convictions. The entire record was reviewed and all relevant information considered in reaching a decision on the motion.

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. The methodology adopted by the Attorney General consists of a three-pronged approach. 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. 24 I&N Dec. at 698 (citing *Duenas-Alvarez*, 549 U.S. at 193). 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 or “modified categorical” inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. 24 I&N Dec. at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment or conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708. Finally, 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.

The record reflects that on May 17, 2005 in the Criminal Court of the City of New York, the applicant pled guilty to [REDACTED] (NYPL) § 155.25. He was conditionally discharged for one year, required to perform seven days of community service and ordered to pay restitution in the amount of [REDACTED]. The same day, the applicant also pled guilty to [REDACTED] §165.40, was conditionally discharged for one year and ordered to perform three days of community service. On June 27, 2006, the applicant, again before the [REDACTED] pled guilty to Grand [REDACTED] § 155.30, was conditionally discharged and ordered to perform

ten days of community service. On July 5, 2006, the applicant pled guilty to Disorderly Conduct, NYPL § 240.20, and was sentenced to time served by the Supreme Court of the State of New York, Bronx County.

Having reviewed the applicant's convictions, the AAO does not find it necessary to conduct a *Silva-Trevino* analysis to determine whether the applicant is inadmissible to the United States pursuant to section 212(a)(2)(a)(I)(i) of the Act. We have previously considered three of the applicant's offenses – Criminal Possession of Stolen Property in the Fifth Degree, NYPL § 165.40; Petit Larceny, NYPL § 155.25; and Grand Larceny in the Fourth Degree, NYPL § 155.30 – and have found them to be crimes that categorically involve moral turpitude. Accordingly, the applicant's admission to the United States is barred by section 212(a)(2)(A)(i)(I) of the Act and, as he does not contest his inadmissibility, we will proceed directly to a consideration of the extent to which the record establishes that the bar to his admission would result in extreme hardship for a qualifying relative.

Section 212(h) of the Act states 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)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relative in this proceeding is the applicant's spouse. Accordingly, hardship to the applicant or other family members will be considered only insofar as it results in hardship to the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 BIA 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 BIA 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 BIA 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 BIA 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.

On appeal, counsel asserts that since the onset of the applicant's immigration problems, his spouse has suffered from depression and extreme emotional distress, which has resulted in her losing her employment as a child care provider. Counsel states that, as of November 19, 2011, the applicant's spouse has begun treatment at the [REDACTED]. Counsel also notes that the applicant's spouse does not have health insurance and that the applicant is paying for her treatment.

In a November 23, 2011 statement, the applicant's spouse maintains that she has become so depressed as a result of the applicant's "uphill battle" to become a Lawful Permanent Resident that

she is seeking professional help. She states that she suffered a nervous breakdown after the applicant's waiver was denied and that she is unable to eat or sleep, spending most of the time in bed crying. As a result of her fragile state, the applicant's spouse reports, the family who previously employed her has hired someone else to care for their child, leaving her without any employment. She also asserts that her current mental state prevents her from obtaining new employment and that the applicant is now the sole provider for their family. She indicates that they have a [REDACTED] lease, as well as other monthly obligations that include a [REDACTED] car insurance payment, an electric bill that ranges between [REDACTED] and credit card payments of [REDACTED]. The applicant's spouse states that in the applicant's absence, she would not be able to pay these bills and would become homeless. She further states that she does not have health insurance and that the applicant pays for her mental health treatment, which costs [REDACTED] per session.

The applicant's mother-in-law in an undated statement asserts that his removal would deepen her daughter's depression and that without the applicant, she would have to assume the burden of caring for and supporting her daughter. She states that she has neither the space nor the money to care for her daughter as her youngest son has just moved back home. She also indicates that she works long hours and would not be around to monitor her daughter, who in her present state should not be left alone. The applicant's mother-in-law also states that without the applicant, her daughter would lose everything as she would be unable to pay their bills, including those for her therapy. The applicant's mother-in-law also contends that the applicant's removal to France would add to her daughter's worries, as his not having a job or a home to which he can return would be of concern.

To establish the current state of his spouse's mental and emotional health, the applicant has submitted statements from two mental health practitioners and a physician.

- A November 23, 2011 letter from social worker [REDACTED] reflects that, on November 19, 2011, the applicant's spouse was seen for an initial assessment of her mental health as she was having difficulty sleeping, and experiencing racing thoughts and anxious feelings in connection with the applicant's pending removal. The letter also indicates that the applicant's spouse was scheduled to return on November 28, 2011 for continued assessment.
- A statement from psychologist [REDACTED] indicates that he interviewed the applicant's spouse on May 7, 2012 and that she reported the following symptoms: insomnia, low energy, anger control problems, concentration problems, a lack of sexual desire and general apathy. In his statement, [REDACTED] finds these symptoms to be the result of the stress related to the applicant's spouse's uncertainty and worry over the immigration status of the applicant and indicates that he is working with her to develop a treatment plan to manage them. In an accompanying August 7, 2012 psychological report, [REDACTED] states that he administered the Beck Anxiety Inventory and Beck Depression Inventory II to the applicant's spouse and that her scores on these tests indicate that she is suffering from severe anxiety and depression. He recommends that the applicant's spouse see a psychiatrist to consider starting mood-stabilizing medication, continue with psychotherapy and pursue "self-care" activities such as regular exercise, healthy eating and socialization.
- A statement from [REDACTED] establishes that on August 25, 2012, he saw the applicant's spouse who reported a general sense of apathy and loss of interest in life since the

applicant's immigration problems began. He indicates her symptoms as being easily tired, sadness, very disturbed sleep, a lack of sexual desire, an inability to concentrate and irritability. [REDACTED] diagnoses the applicant's spouse with "depressive disorder" and "anxiety state, unspecified," and indicates that he has strongly advised her to see a psychiatrist. The statement is accompanied by a prescription for Lexapro, signed by [REDACTED] and dated September 6, 2012.

The record further includes letters from two individuals who are business acquaintances of the applicant's and who report their observations of the emotional impact that the applicant's immigration problems have had on his spouse. In a November 18, 2011 statement, attorney [REDACTED] for whom the applicant has done real estate work indicates that the last time the applicant's spouse was in his office, she was "beside herself" and was unable to fully respond to questions about an accident case. [REDACTED] in a November 21, 2011 statement asserts that the applicant has done real estate work for her employer and that she has come to know both him and his spouse. [REDACTED] reports that the applicant's spouse was previously smiling and cheerful when she came to the office, but that the last time she visited, she was "distracted" and "unable to focus."

Based on the record before us, the AAO finds the applicant to have established that his spouse would experience extreme hardship if the waiver application is denied and she remains in the United States without him. In reaching this conclusion, we have taken particular note of the several statements from the doctor and mental health professionals who have examined the applicant's spouse during the period November 19, 2011 through August 25, 2012. While individually, these statements are not persuasive, we find that when considered as a whole, they and the testing results reported by [REDACTED] establish that the applicant's immigration problems have had a significant negative impact on his spouse's mental health. Further, although the record lacks documentation of the financial obligations the applicant's spouse would face in the applicant's absence, the Form I-864, Affidavit of Support Under Section 213A of the Act, submitted by the applicant's spouse on January 22, 2010 indicates that she then earned [REDACTED] a year as a childcare provider, income substantially below the 2010 federal poverty guideline of \$ [REDACTED] for a family of one. We also note that the applicant's mother has indicated that she cannot provide her daughter with financial support and, therefore, conclude that the applicant's removal from the United States would result in considerable financial hardship for his spouse. When the emotional and financial hardships just discussed and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds the applicant to have established that his spouse would experience extreme hardship upon separation.

On appeal, counsel also contends that the applicant's spouse would experience extreme hardship if she relocates to France with the applicant. He maintains that there is a resurgence of racism in France and that the applicant and his spouse are extremely concerned about the intolerance they would face in France as a mixed-race couple. Counsel states that the societal difficulties the applicant's spouse would face would be exacerbated by her unfamiliarity with the French language and culture. He also asserts that the applicant and his spouse would have no home or residence in France to which they could return.

In a November 23, 2011 statement, the applicant contends that he has nothing to return to in France and that he no longer has family in France since his grandmother died in 2008. He further asserts that life in France would not be easy for his spouse, even if she recovers from her depression. He

states that his spouse would not feel at home in France, as she does not speak French and it would be extremely difficult for her to communicate and move about freely. He further states that racism is prevalent in France and his spouse is “black” and that her race and inability to speak French would make it extremely difficult for her to obtain employment. The applicant’s spouse also contends that religious freedoms are viewed very differently in France and that it is against the law in France for a woman to wear a burka or niqab in public and that children are not allowed to wear religious symbols in school. He states that moving to France would not be an easy transition for his spouse.

In support of conditions in France, the applicant has submitted the following online articles from 2010 and 2011: “Racism in France on the rise, says UN,” <http://www.english.rfi.fr/>; “France experiencing ‘resurgence of racism,’” <http://www.telegraph.co.uk/news/worldnews/europe/france/>; and “Racism hits new high in France: report,” <http://www.presstv.ir/detail/175035.html>, all of which report a significant resurgence in racism. A fourth article, “Crisis in France,” <http://www.businessweek.com>, reports on problems in the French economy in 2005.

While the AAO acknowledges the applicant’s concerns regarding the hardships he believes his spouse would experience if she relocates to France, we do not find the record to contain sufficient evidence to demonstrate that, even when considered in the aggregate, they would rise beyond the hardships normally created by a move to a new country. Although the applicant’s spouse is unable to speak French, which would undoubtedly make it more difficult for her to obtain employment, it is not clear from the record that she would want or need to seek to obtain employment if she and the applicant moved to France. Nothing in the record indicates that the applicant, who was previously employed in France, would be unable to obtain new employment that would allow him to support himself and his spouse. Further, although the applicant also indicates that resurgent racism and religious intolerance in France would pose problems for his spouse, the country conditions information in the record references only the growing antagonism in France toward Muslims, not French attitudes toward persons whose skin color is black or towards mixed-race marriages. We also note that, although the applicant also asserts that French laws prohibiting the wearing of burkas and niqabs in public would make it difficult for his spouse to adjust to life in France, he fails to indicate that she is Muslim or that she prefers to wear a burka or niqab. Moreover, while the applicant claims that he no longer has anything to return to in France and that his only family member in France was his grandmother who died in 2008, a Form G-325A, Biographic Information, signed by the applicant on January 9, 2010, indicates that both of his parents are alive and living in Paris. Accordingly, the AAO finds that the applicant has failed to establish that relocation to France would result in extreme hardship for his spouse.

Extreme hardship warranting a waiver of inadmissibility can be found only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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In proceedings for application for waiver of grounds of inadmissibility under sections 212(g) and (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.