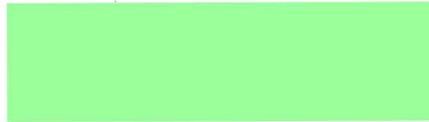




U.S. Citizenship  
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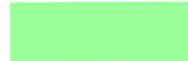
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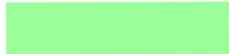
Date **MAY 09 2013**

Office: NEWARK, NJ

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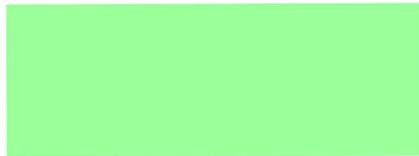


IN RE:



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,

Ron Rosenberg  
Acting 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 Turkey 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 remain in the United States with his U.S. citizen spouse and lawful permanent resident daughter.

In a decision dated December 12, 2011, the field office 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 Ground of Excludability (Form I-601) accordingly.

On appeal, counsel submits additional evidence of hardship and asserts that the applicant's spouse and daughter would suffer extreme hardship as a result of the applicant's inadmissibility.

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 (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 determining whether a crime involves moral turpitude, the Third Circuit Court of Appeals, per *Jean-Louis v. Holder*, 582 F.3d 462 (3<sup>rd</sup> 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 reflects that on December 16, 2005, the applicant was convicted of Terroristic Threats under New Jersey Stat. Ann. § 2C:12-3(b) and sentenced to 3 days in jail and two years probation. The maximum penalty for a conviction under New Jersey Stat. Ann. § 2C:12-3(b) is five years.

New Jersey Stat. Ann. § 2C:12-3(b) states:

(b). A person is guilty of a crime of the third degree if he threatens to kill another with the purpose to put him in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out.

In *Matter of Ajami*, the Board of Immigration Appeals (BIA) addressed whether a stalking offense that involves the making of credible threats against another constitutes a crime involving moral turpitude. 22 I&N Dec. 949 (BIA 1999). The BIA concluded that “the intentional transmission of threats is evidence of a vicious motive or a corrupt mind,” and a crime encompassing such conduct involves moral turpitude. 22 I&N Dec. 949, 952. New Jersey Stat. Ann. § 2C:12-3(b) not only involves the making of credible threats, these threats involve the imminent fear of death. Therefore, a conviction under New Jersey Stat. Ann. § 2C:12-3(b) is “evidence of a vicious motive or a corrupt mind” and involves moral turpitude. *See id.* Accordingly, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

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

daughter 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 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 of hardship includes: medical documentation, employment documentation, documentation concerning the applicant's father-in-law, documentation concerning the applicant's spouse's relatives, financial documentation, psychological evaluations, and country conditions information for Turkey.

The applicant's spouse is claiming emotional, financial, and medical hardship as a result of relocation and emotional hardship as a result of separation. The applicant's spouse states that she cannot relocate to Turkey because her family is in the United States; she has no cultural, familial, or economic ties to Turkey; and she will not be able to find employment or access the medical care she needs in Turkey. The record indicates that the applicant's spouse's mother, father, two sisters, and daughter are lawful permanent residents residing in the United States. In addition, with the exception of her daughter, who is in the U.S. Army, all of these immediate relatives live in New Jersey. Moreover, the record indicates that the applicant's spouse has been employed with the same employer since 2005 and has medical insurance and a retirement account with her employer. The applicant's spouse states that her employment allows her to support herself and to help support her father, who the record indicates is currently in a nursing home. In regards to medical hardship, the record also indicates that the applicant's spouse was diagnosed with and treated for melanoma.

We find that the applicant's spouse would suffer extreme hardship upon relocation to Turkey. We note that the applicant's spouse was born in the Dominican Republic and is 48 years old. Relocating to Turkey would involve significant hardship because of the applicant's spouse's strong familial and economic ties to the United States. Exacerbating the applicant's spouse's situation is her lack of ties to Turkey and her inability to speak the language. Given the applicant's spouse's diagnosis of melanoma and the country conditions documentation indicating that the medical care in Turkey is not of the same standard as in the United States, we find that the applicant's spouse will also suffer medical hardship upon relocation.

However, we do not find that the applicant's spouse will suffer extreme hardship upon separation. The applicant's spouse indicates that she is financially independent and does not rely on the applicant for support. She is claiming extreme emotional hardship upon separation and reported in her psychological evaluation that when she thinks about separating from the applicant she has difficulty falling and staying asleep, her appetite is poor, and she has trouble concentrating. She stated that she has persistent sadness, chronic anxiety, and crying spells. In his psychological evaluation, [REDACTED] diagnoses the applicant's spouse with generalized anxiety disorder with depressed mood, which, he states, will evolve into Major Depressive disorder upon separation from the applicant.

We find that the record of emotional hardship fails to establish that the hardship the applicant's spouse will suffer rises beyond what would normally be expected upon the separation of a husband and wife. The record does not indicate the severity of her symptoms, any treatment she is seeking to

mitigate her symptoms, or how these symptoms are effecting her daily functioning. Thus, we find that the applicant has not shown that his spouse will suffer extreme hardship upon separation.

We also find that the record fails to establish that the applicant's daughter would suffer extreme hardship upon relocation or separation. The record indicates that the applicant's former spouse has custody of his daughter and that the applicant pays child support for this daughter on a biweekly basis. The record does not indicate how often the applicant sees his daughter or how close of a relationship they share. The record is silent as to what hardship would result from the applicant's child losing the child support the applicant provides. Furthermore, the record does not indicate any other hardships the applicant's daughter may face as a result of the applicant's inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility 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 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 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 relatives in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse or daughter caused by the applicant's inadmissibility to the United States. 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 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 and the appeal will be dismissed.

**ORDER:** The appeal will be dismissed.