

(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date:

**MAY 29 2013**

Office: HOUSTON

FILE:



IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Jordan 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 (Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant is the husband of a U.S. citizen. On November 1, 2011, he filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility under 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 wife and children.

In a decision dated May 7, 2012, the field office director concluded that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601 waiver application accordingly.

On appeal, counsel asserts that the director erred in finding that the applicant has not established extreme hardship to his qualifying relatives, as the evidence outlining emotional and financial difficulties demonstrates extreme hardship to the applicant's spouse and children.

The record includes, but is not limited to: the applicant's sworn statement; the applicant's wife's sworn statement; birth certificates; copies of naturalization certificates; a marriage certificate; letters by the applicant's doctors; medical reports; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part, that:

- (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.)

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 on December 22, 2000, the applicant was convicted in the Harris County Criminal Court, Texas, of “theft over 50 and under 500,” a class B misdemeanor in violation of section 31.03 of the Texas Penal Code. The applicant was sentenced to two days of jail and was ordered to pay a fine of \$600. The field office director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

Texas Penal Code § 31.03 provides in pertinent part that:

- (a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.
- (b) Appropriation of property is unlawful if:
  - (1) it is without the owner's effective consent;
  - (2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or
  - (3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. *See Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974) ("It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . ."); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966) ("Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude]."). Additionally, the Board noted in *Matter of Khourn*, 21 I&N Dec. 1041, 1042-1043 (BIA 1997), that theft of property in violation of Texas law constitutes a crime involving moral turpitude. The applicant does not dispute his inadmissibility from this conviction on appeal.

The record further shows that on January 7, 1995, the applicant was charged with "petty theft with prior sentence" in violation of California Penal Code § 666, and was convicted of this crime in the Municipal Court of Concord, California. The applicant was sentenced to 10 days in jail and was placed on probation for a period of 24 months. The field office director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

California Penal Code § 666 provides, in pertinent part, that:

Notwithstanding Section 490, any person described in paragraph (1) who, having been convicted of petty theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

The California offense of petty theft is found in section 484(a) of the California Penal Code. That section provides, in pertinent part, that:

Every person who shall feloniously steal, take, carry, lead, or drive away the personal

property of another, or who shall fraudulently appropriate property which has been entrusted to him, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. . . .

The Board in *Matter of Pedroza* determined that misdemeanor petty theft under section 484 of the California Penal Code constitutes a crime involving moral turpitude. 25 I&N Dec. 312, 315-16 (BIA 2012). Additionally, the Ninth Circuit Court of Appeals in *Castillo-Cruz v. Holder* determined that petty theft under Cal. Penal Code § 484(a) is a crime categorically involving moral turpitude. 581 F.3d 1154, 1160 (9th Cir. 2009). The Ninth Circuit reviewed lower court case law on convictions under Cal. Penal Code § 484(a), and determined that a conviction for theft (grand or petty) under the California Penal Code requires the specific intent to deprive the victim of his or her property permanently. *Id.* at 1160 (citations omitted). Consequently, the AAO finds that the applicant's conviction for petty theft with a prior under Cal. Penal Code § 666 is a crime involving moral turpitude which renders him inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal. As the applicant is inadmissible for having been convicted of two crimes involving moral turpitude, he is ineligible for the petty offense exception found in section 212(a)(2)(A)(ii) of the Act. As the applicant has been found inadmissible under section 212(a)(2)(A)(i)(I), the AAO need not address the applicant's 1994 petty theft conviction involves moral turpitude.

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

(h) The Attorney General [Secretary of Homeland Security] may, in [her] 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 applicant's wife and children are the qualifying relatives in these proceedings. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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.

With regards to joining the applicant in Jordan, in a sworn statement dated June 30, 2012, the applicant's wife indicates that she would experience hardships as a Christian woman married to a Muslim man. The applicant's wife states that she would live in constant fear due to the safety issues in that country and for refusing to convert to Islam. The AAO notes that the United States Department of State Country Specific Information Report for Jordan, dated March 23, 2013, indicates that the threat of terrorism remains high in that country. According to the report, "[t]ransnational and indigenous terrorist groups have demonstrated the capability to plan and implement attacks in Jordan. In August 2010, a roadside improvised explosive device (IED) detonated next to a vehicle carrying three USG contractors as it was traveling through an Amman suburb; the contractors did not suffer any serious injuries." The report further provides that "[f]ollowing the death of Usama bin Laden in May 2011, the Department issued a worldwide Travel Alert to all U.S. citizens traveling or residing overseas regarding the possibility of enhanced anti-American violence. Travelers to Jordan should be cognizant of the fact that Al-Qaida in Iraq affiliates have carried out terrorist activities against U.S. and Government of Jordan (GOJ) targets in Jordan." The report indicates that terrorists often do not distinguish between U.S. government personnel and private U.S. citizens, and that "U.S. citizens should maintain a high level of vigilance, be aware of their surroundings, and take appropriate steps to increase their security awareness." Regarding her concerns about religious practices, the report provides that "Islam is the state religion of Jordan" and that "U.S. citizens have been deported, detained, and arrested for discussing or trying to engage Jordanians in debate about religion."

The applicant's wife further states that relocation to Jordan would result in economic hardship, as the applicant would have to secure employment at the age of 67. The applicant's wife asserts that this economic uncertainty is causing her emotional difficulties. The AAO notes that the applicant's has lived her life in the United States, and that if she joined the applicant to live in Jordan, she will have to separate from her family and community ties, and will have to live in a country with security risks and the threat of terror attacks. The AAO finds that the combination of the demonstrated hardship factors show that the applicant's wife would experience extreme hardship if she joined the applicant to live in Jordan.

With regards to remaining in the United States without the applicant, in her declaration dated June 30, 2012, the applicant's wife asserts that without the income the applicant derives from his business, she would "suffer financially and would have to depend on the government for help in maintaining her financial and physical well-being." The applicant's son, Mohammad, indicates in an affidavit dated June 30, 2012, that he would be unable to run the cellular retail business he co-owns with the applicant without his guidance and leadership. Here, the AAO finds that no evidence was submitted to corroborate the assertions of financial hardship. The record does not include financial documentation establishing the inadequacy of the applicant's wife's earnings, that the applicant's income is sufficient to support their household, or that he co-owns a business with his son. Although the applicant's assertions have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972)

("Information in an affidavit should not be disregarded simply because it appears to be hearsay: in administrative proceedings, that fact merely affects the weight to be afforded it."). The burden of proof in this proceeding lies with the applicant, and "while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. at 247.

The AAO acknowledges the applicant's wife's assertions regarding emotional hardships and the effect of separation upon the applicant's immediate family. The AAO further notes her concerns over the applicant's health if he is forced to return to Jordan without his family, as the applicant is a prostate cancer survivor undergoing follow-up checks. However, the record of proceedings, as presently constituted, indicates that the applicant's qualifying relatives face no greater hardship from separation than the unfortunate but common difficulties arising whenever a spouse is denied admission. The Board has long held that the common or typical results of inadmissibility do not constitute extreme hardship, and has listed separation from family members and emotional difficulties as factors considered common rather than extreme. *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).

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 relative in this case. 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 an application for waiver of grounds of inadmissibility under section 212(h) the Act, the burden of proving eligibility rests 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.