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



U.S. Citizenship  
and Immigration  
Services

DATE: **JAN 25 2014**

OFFICE: LAS VEGAS

FILE: [REDACTED]

IN RE: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

A small handwritten letter "R" in black ink.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Director, Las Vegas, Nevada denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Morocco 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 a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his U.S. citizen spouse and stepchild.

The Field Director concluded that the applicant does not merit a grant of his waiver application based upon discretion and denied the application accordingly. *See Decision of the Field Director*, dated June 14, 2013.

On appeal, counsel for the applicant asserts that the applicant's spouse, stepdaughter, and mother would all suffer extreme hardship if the applicant's waiver application is denied. Counsel contends that the applicant has been crime-free for about six years. Counsel further asserts that the applicant's spouse will suffer emotional and financial hardship upon separation from the applicant and has no ties in Morocco.

In support of the waiver application and appeal, the applicant submitted letters from his spouse, a letter from the applicant, a letter from the applicant's mother, identity documents, background country conditions concerning Morocco, psychological evaluations of his spouse, and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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 –

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

- (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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 . . . .

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.)

The record reflects that the applicant pled guilty to robbery by sudden snatching pursuant to section 812.131(2)(B) of the Florida Statutes on [REDACTED] 2006. Following a guilty plea, the applicant was sentenced to 18 months of probation with certain conditions and adjudication withheld. A subsequent violation of probation resulted in a revocation of probation on June 4, 2007 and sentence of 180 days in county jail. The applicant does not dispute this ground of inadmissibility on appeal, and the AAO finds sufficient support for this finding in the record.

The Board has determined that "robbery is universally recognized as a crime involving moral turpitude." *Matter of Martin*, 18 I&N Dec. 226, 227 (BIA 1982). Further, the Board found that robbery involves moral turpitude and is an offense against both person and property that is "a grave, serious, aggravated, infamous, and heinous crime." *Matter of Rodriguez-Palma*, 17 I&N Dec. 465, 469 (BIA 1980). The applicant's robbery conviction therefore renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

A section 212(h) waiver of the bar to admission resulting from 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 U.S. citizen or lawful permanent resident spouse, parent, or child of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 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.

The record reflects that the applicant is a 25-year-old native and citizen of Morocco. The applicant's spouse is a 25-year-old native and citizen of the United States. The applicant's mother is a 57-year-old native of Morocco and lawful permanent resident of the United States. The applicant's stepdaughter is a six year-old native and citizen of the United States. The applicant is currently residing in Las Vegas, Nevada.

The applicant's spouse asserts that she has been employed as a server for [REDACTED] since January 2007. The applicant's spouse contends that the applicant's business provides her with financial support, as they have two homes and their expenses are paid. The applicant's spouse further asserts that without the income of the applicant, she would be financially struggling and would most likely be forced to drop out of college to support herself and her child.

It is noted that the applicant and his spouse were married on July 4, 2012. There is no indication that the applicant's spouse has been unable to support herself and her child since her employment in January 2007, even prior to her marriage to the applicant. The applicant's spouse's income tax return from 2011, as a single filer, reflects a total income of \$22,466. The applicant's spouse asserts that her annual income is approximately \$18,000. The applicant and applicant's spouse's joint income tax return from 2012 reflects a total income of \$20,851. There is no information from this tax period concerning the applicant's business or the extent to which he contributed income to this total amount. The record contains lease documents concerning the applicant's residence in Las Vegas, Nevada and the applicant's spouse's residence in [REDACTED]. The record is insufficient to determine that the applicant's spouse would be unable to meet her financial obligations in the absence of the applicant.

The applicant's spouse asserts that she will be devastated if the applicant's application is denied. The applicant's spouse contends that she worries about having her family ripped apart and her anxiety level has risen accordingly.

The record contains two psychological evaluations of the applicant's spouse, dated July 27, 2012 and November 29, 2012. Both evaluations state that the applicant's spouse is in the severe range

for depression, anger, and agitation and recommend psychotherapy. Both evaluations also note that the applicant's spouse reported some history of abuse as a minor and suicidal ideation. The July 27, 2012 evaluation states that the applicant's spouse's high anxiety and anger scores do not allow her to be consciously aware of current suicidal ideation, but this will change as the situation changes, thus increasing her risk. The evaluation does not explain how it is known that the applicant's spouse is experiencing suicidal ideation if she has not articulated this herself. The psychometrics section of the November 29, 2012 evaluation identifies the applicant's spouse's hopelessness score as the basis for determining a significant increase in her risk for suicide, finding a score increase of 43%. However, the applicant's spouse's hopelessness score is listed as 14 in both her initial and updated evaluations, which would indicate a static score from the first to the second evaluations.

It is noted that the most recent psychological evaluation of the applicant's spouse took place on November 29, 2012. The applicant's spouse submitted a recent letter, dated August 1, 2013, asserting that she is currently seeing her psychiatrist every three to four months and has since realized that every given moment should be treasured. It is noted that the psychiatrist regularly visited by the applicant's spouse, not the same individual who conducted the applicant's spouse's evaluations, has not submitted any documentation. It is also noted that the applicant's spouse married the applicant on July 4, 2012 and her prior marriage ended on July 20, 2011. The record indicates that the applicant's spouse was acquainted with the applicant in grade school, but there is no information concerning the extent of their relationship since that time and prior to their marriage. Further, the applicant's spouse asserts that she and her husband currently reside in different states, Florida and Nevada, with the applicant spending 16-22 days away on business every month. The applicant's spouse asserts that she stays in the applicant's residence when she visits Las Vegas. As such, the evidence indicates that the applicant's spouse currently resides apart from the applicant for at least half of each month. It is noted that the psychological evaluations for the applicant's spouse do not address the duration of the applicant's spouse's relationship to the applicant as partners or that she has been residing apart for less than half of the time since their marriage.

The applicant's spouse asserts that her daughter would also be devastated upon separation from the applicant and denial of the applicant's waiver would bring stress to her daughter, as she senses when there are problems.

The applicant's mother submitted a letter, written on her behalf by another child, asserting that she has been diagnosed with medical illnesses and the applicant acts as a home care provider for her when he is not away for work. The applicant's mother contends that the applicant will be supporting her financially for her entire life and that she and her daughter would be living in the streets without his support. The record does not contain any medical or financial documentation concerning the applicant's mother in support of her assertions. There is also no indication as to who provides care for the applicant's mother in the applicant's absence. 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)).

It is acknowledged that separation from a spouse, child, or stepparent nearly always creates a level of hardship for both parties. However, the applicant has not established that the emotional hardship suffered by his spouse, mother, or stepdaughter would go beyond the common results of separation from a close family member due to inadmissibility.

Counsel for the applicant asserts that the applicant has a custody arrangement with her ex-spouse and would not have the rights to remove her daughter from the United States. As such, the applicant's spouse asserts that she would be faced with a custody battle with her ex-husband if she relocated to Morocco with her daughter. It is noted that the record contains a divorce decree for the applicant's spouse, but does not contain a custody agreement.

Counsel for the applicant contends that the applicant's spouse is a native and citizen of the United States whose entire family resides in the United States. The applicant's spouse asserts that she is currently a student in college who has been employed in the same position since January 2007. The applicant's spouse's psychological evaluation states that she was born in Florida, where she currently resides, and has a mother living in the same state. The evaluation also states that the applicant's spouse's sister depends upon her for transportation and financial assistance.

Counsel contends that the applicant's spouse does not speak the languages of Morocco and has no ties to that country. The applicant's spouse's psychological evaluation states that she suffers from medical conditions and would lose her health insurance if she relocated to Morocco. It is noted that the record does not contain medical documentation for any non-psychological conditions of the applicant's spouse or proof of her health insurance in the United States. The evaluation also states that the applicant's spouse would lose everything she has established in the United States and would be fearful that she or her child would come to harm if residing in Morocco. It is noted that the U.S. Department of State's Country Specific Information for Morocco, dated September 11, 2013, indicates that there is potential for terrorist violence against U.S. citizens in Morocco. In the aggregate, the record contains sufficient evidence to find that the applicant's spouse would suffer extreme hardship upon relocation to Morocco.

The applicant's spouse contends that she currently shares custody with her daughter's biological father. Upon relocation to Morocco, it is noted that the applicant's spouse's daughter would be unable to reside part-time with her biological father in the United States. The applicant's spouse's daughter is a native and citizen of the United States and contents of the Country Specific Information for Morocco have been noted above. In the aggregate, the record contains sufficient evidence to find that the applicant's spouse's daughter would suffer extreme hardship upon relocation to Morocco.

The applicant's mother asserts that Morocco is unstable with high unemployment and crime. The applicant's mother contends that she would return to Morocco with the applicant if his waiver application were denied, but that she would not have access to her medication if she relocated. The applicant's mother also asserts that she has adjusted to the American lifestyle. As noted, the record does not contain medical documentation for the applicant's mother and does not indicate that any medications she requires would be unavailable. It is noted that the U.S. Department of State's Country Specific Information for Morocco states that most ordinary prescriptions and

over-the-counter medications are widely available. It is also noted that the applicant's mother does not speak or write in English and is a native of Morocco. In the aggregate, the record contains insufficient evidence to find that the applicant's mother would suffer extreme hardship upon relocation to Morocco.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 in 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 to a qualifying relative upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse, lawful permanent resident mother, and stepdaughter, as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this 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. 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.