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



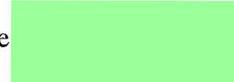
U.S. Citizenship  
and Immigration  
Services



DATE: JUN 02 2014

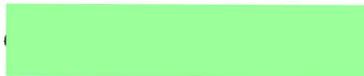
OFFICE: NEW YORK

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IN RE:

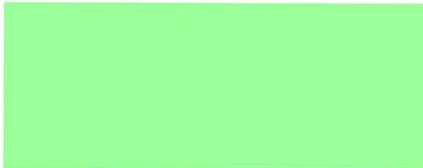
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York 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 Israel 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 record indicates that the applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, dated June 15, 2013.

On appeal counsel contends that all supporting documents were ignored, and that if a waiver is not granted, the applicant's U.S. citizen spouse will experience extreme hardship. *See Form I-290B, Notice of Appeal or Motion*, received July 15, 2013.

The record contains, but is not limited to: Form I-290B, *Notice of Appeal*; various immigration applications and petitions; a hardship letter; an affidavit from the applicant's mother; a psychosocial evaluation; medical/substance abuse treatment letters; letters of character reference and support; education and volunteer-related documents; financial, business, employment and tax-related documents; birth and marriage certificates; and the applicant's conviction and court documents. The entire record was reviewed and considered in rendering this 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.

...

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), 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.)

The record shows that on October 9, 2009, the applicant pled guilty and was convicted of Assault in the Third Degree – Knowingly/Recklessly Cause Injury, in violation of Colorado Revised Statutes (C.R.S.) §18-3-204(1)(a); and Resisting Arrest, in violation of C.R.S. §18-8-103, for his conduct on June 5, 2009. The applicant was sentenced to 5 years of probation, a sentence under which he currently remains. A Mandatory Protection Order against the applicant was granted to his victim on June 8, 2009, and was vacated after one year on June 9, 2010.

The AAO now turns to a consideration of whether the applicant's conviction constitute crimes involving moral turpitude. At the time of the applicant's conviction, C.R.S. §18-3-204 provided, in pertinent part:

- (1) A person commits the crime of assault in the third degree if:
  - (a) The person knowingly or recklessly causes bodily injury to another person or with criminal negligence the person causes bodily injury to another person by means of a deadly weapon ...
  
- (3) Assault in the third degree is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3)."

In assessing whether a conviction is a crime involving moral turpitude, the adjudicator must first "determine what law, or portion of law, was violated." *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). The adjudicator engages in a categorical inquiry, considering the "inherent nature of the crime as defined by statute and interpreted by the courts," not the underlying facts of the criminal offense. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)). If the statute "defines a crime in which turpitude necessarily inheres, then the conviction is for a crime involving moral turpitude." *Matter of Short, supra*, at 137.

Where the statute includes some offenses involving moral turpitude and some which do not – where there is a *realistic probability* that the statute would be applied to conduct not involving moral turpitude – the adjudicator looks to the record of conviction to determine the offense for which the applicant was convicted. *See Matter of Guevara Alvaro*, 25 I&N Dec. 417, 421 (citing *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689-90, 696-99 (A.G. 2008)); *see also Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability, as opposed to a theoretical possibility, exists where there is an actual prior case, possibly the applicant's own case, in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. *Matter of Silva-Trevino, supra*, at 708. The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Matter of Louissaint, supra*, at 757; *see also Shepard v. U.S.*, 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the "charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.")

The record of conviction indicates that the applicant pleaded guilty to two counts of assault in the third degree based on a charging document stating that he unlawfully, knowingly, or recklessly caused bodily injury to two individuals and he was placed on probation for a period of five years. *See Plea Agreement, Advisement to Criminal Procedure and Plea of Guilty and Order for Supervision: Probation, Deferred Sentence, or Deferred Prosecution* dated October 9, 2009. Based on the foregoing, the district director determined that the applicant's conviction under C.R.S. §18-3-

204(1)(a) is crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The record supports this finding and counsel concedes inadmissibility. The applicant requires a waiver under section 212(h) of the Act.

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, 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 only qualifying relative in the present matter is the applicant's spouse. 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-Morales*, 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*, 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 shows that the applicant’s spouse is a 27-year-old native citizen of the United States who asserts hardship of an emotional and economic nature. She explains that she has had a difficult life but the applicant always makes her feel important and loved and supports her emotionally and financially. The applicant’s spouse states that she could not separate from the applicant and they could not leave behind [REDACTED] a dog recently given them by her mother-in-law. [REDACTED] states that he evaluated the applicant and his spouse by phone on July 18 and July 29, 2013. Dr. [REDACTED] relays from the applicant’s spouse that when she was 10 years old, her father suffered a psychotic breakdown, causing havoc in the home for the next 8 years before her mother left him. She then went from one relationship to another, often with abusive men, before finding the applicant. Dr. [REDACTED] relays from the applicant’s spouse that she suffers from intermittent panic attacks, is often depressed, and fears for her future well-being without the applicant.

Dr. [REDACTED] indicates that the applicant’s spouse’s presentation is consistent with major depressive disorder, rule/out panic attacks, and post-traumatic stress disorder. He avers that the applicant’s spouse has previously undergone psychotherapy and counseling for self-esteem issues related to her father and adds that she has a history of heart murmur. The record contains no corroborating medical or psychotherapy documents. 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)). Dr. [REDACTED] states that “[A]ppropriate mental health and physical follow-up with continuing care has been recommended concerning general and specific functioning, as outlined in the body of this report.” While Dr. [REDACTED]’s evaluation has been considered, it appears to rely almost entirely on self-reporting by the applicant and his spouse during two telephone conversations, lacks any discussion of diagnostic testing or methods,

recommends no treatment for the conditions identified, and is not corroborated by documentary evidence of the applicant's medical or psychotherapeutic history. The evidence in the record is insufficient to distinguish the emotional or medical impact of separation on the applicant's spouse from those challenges normally associated with the inadmissibility or removal of a loved one. However, emotional, psychological and medical hardship assertions have been considered in the aggregate along with all other assertions of separation-related hardship.

Dr. [REDACTED] relays from the applicant's spouse that she holds an undergraduate degree and is currently enrolled in a master degree program, while the applicant is completing a bachelor degree program and working part time. Two letters from [REDACTED] indicate that the applicant was on track to graduate in March or April 2013, several months before Dr. [REDACTED]'s July 30, 2013 evaluation. According to Dr. [REDACTED] the applicant's spouse has almost no income and the applicant's family "fully and completely provides for [REDACTED]'s tuition needs, and all other monetary support..." No corroborating documentary evidence has been submitted demonstrating economic support by the applicant's family and the record is unclear concerning the applicant and his spouse's current income from all sources, as well as their regular expenses. Income tax documents for 2012 reflect a combined income of \$55,215 from employment, unemployment compensation, business income, and a settlement. Details concerning the referenced settlement or unemployment compensation have not been provided. A single contract signed by the applicant on behalf of "[REDACTED] Inc.," indicates that [REDACTED] Ltd., will pay [REDACTED] Inc. \$7,500 monthly from January 1, 2013 to December 31, 2014 for consultation services. Incorporation documents reveal that the applicant is President and Secretary of both corporations. A Hebrew language document, appearing to reflect some form of income to the applicant, is included with the 2012 return but has not been accompanied by a full, certified English translation as required under 8 C.F.R. § 103.2(b)(3).<sup>1</sup> Because the required translation was not submitted, the document cannot be considered in this proceeding. Other financial documents in the record include a residential lease in the amount of \$2,100 monthly, bank statements showing that two joint checking accounts were opened in October 2012, and various utility and wireless phone bills. While the applicant's spouse may experience some reduction in income in the event of separation from the applicant, the evidence in the record does not demonstrate the economic impact of their separation or that she would be unable to meet her financial obligations in his absence.

We acknowledge that separation from the applicant may cause various difficulties for the applicant's spouse. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Relocation-related hardship to the applicant's spouse has been addressed only in Dr. [REDACTED]'s evaluation. Dr. [REDACTED] relays that the applicant's spouse refuses to place herself at risk of terrorism

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<sup>1</sup> 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

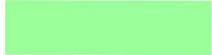
and death in Israel and would never raise children there. Dr. [REDACTED] avers that the applicant's spouse can never relocate to Israel because she is a devout Christian, devoted to her church and family, and in Israel she would be part of an extremely small minority in a country where interreligious and interethnic strife is commonplace. The record contains no country conditions reports or other documentary evidence addressing conditions in Israel. Dr. [REDACTED] concludes that in Israel, the applicant's spouse would face a foreign culture; restrictions on her actions, work, dress, and interests; possible poverty; a dangerous environment; corruption and police ineptitude; and healthcare and social service delivery scarcity. No corroborating documentary evidence has been submitted.

Dr. [REDACTED] states that the applicant's spouse has no Hebrew language skills and thus would be unable to undertake her educational pursuits in Israel or experience any meaningful personal development. The record contains no documentary evidence demonstrating that education in the English language is unavailable in Israel or showing that the applicant's spouse could not develop personally despite a language barrier common to U.S. citizens relocating abroad. Dr. [REDACTED] adds that the applicant fears remaining chronically unemployed in Israel as he was a conscientious objector, lacks employment history there, and has no meaningful job contacts. No corroborating documentary evidence has been submitted demonstrating that the applicant refused to serve a compulsory term in Israel's military or addressing the potential impact this could have on his spouse. Nor have any country conditions reports or other documentary evidence been submitted addressing education, employment, or the economy in Israel to support the claims of limited employment prospects or potential economic hardship.

Dr. [REDACTED] states that the applicant's spouse has long ago forgiven her father for past abuse, hopes to repair communication, and cannot possibly imagine relocating to the Middle East given her father's extremely serious healthcare issues. The record contains no corroborating documentary evidence either of the applicant's spouse's father's health condition(s) or a close relationship between the spouse and her father. Dr. [REDACTED] relays that the applicant's spouse is very close to her younger sister and to her mother, who recently lost her boyfriend of many years to cancer. He adds that most of her extended family also lives in New York, including her paternal grandparents. Dr. [REDACTED] relays that the applicant's spouse fears that she could be ostracized in Israel as she is a Christian woman of color in an interracial marriage with a conscientious objector, and she cannot presently communicate in Hebrew. As noted, the record contains no statements or corroborating documentary evidence addressing any of these issues.

We have considered cumulatively all assertions related to hardship to the applicant's spouse upon relocation, including adjustment to a country in which she has never resided and is unable to communicate in the predominant language; her lifelong residence and family ties in the United States; her reported history of family difficulties and her current emotional and psychological condition; and economic and safety-related concerns about Israel. Considered in the aggregate, we find the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Israel to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship.



Accordingly, we find that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.