

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 03-CR-46

ANAM MANASRAH,

Defendant.

**MOTION FOR FAMILY CIRCUMSTANCES DOWNWARD DEPARTURE
PURSUANT TO U.S.S.G. 5H1.6**

The defendant requests a downward departure pursuant to U.S.S.G. § 5K2 and 5H1.6. Under 18 U.S.C. § 3553 and U.S.S.G. § 5K2.0, “the sentencing court may impose a sentence outside the range established by the applicable guideline, if the court finds ‘that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described’.” According to the United States Supreme Court decision in *Koon v. United States*, “a court may depart on the basis of a discouraged factor, or an encouraged factor already taken into account, however, only if the factor is present to an exceptional degree or in some way makes the case different from the ordinary case.” 518 U.S. 81, 81 (1996).

Pursuant to U.S.S.G. § 5H1.6, “Family ties and responsibilities and community ties are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.” However, the Seventh Circuit Court of Appeals “recognizes downward departures based upon extraordinary family circumstances.” *United States v.*

Owen, 145 F.3d 923, 929 (7th Cir. 1998). Other circuits have also upheld downward departures based on extraordinary family circumstances. See *United States v. Gauvin*, 173 F.3d 798 (10th Cir., cert. denied 528 U.S. 798 (1999)), the court affirmed a downward departure for a parent who supported his wife and four children and whose children could have become wards of the state without his support; *United States v. Galante*, 111 F.3d 1029 (2nd Cir. 1997), the court approved a downward departure for extraordinary circumstances for a defendant who was primary care giver for two young children; *United States v. Jones*, 1999 U.S. Dist. LEXIS 19743 (Dist Court of Illinois, 1999), downward departure granted where separating defendant from her four children would severely harm the children's psychological, emotional, educational and social well-being; *United States v. Blackwell*, 897 F. Supp. 586 (D.D.C. 1995), a downward departure was granted where defendant's six children would have gone uncared for.

In *United States v. Shahira Jebara*, 313 F. Supp. 2d 912 (2004), this court granted a family circumstances departure for Shahira Jebara who is the wife of the lead defendant in the conspiracy which also charged Inam Manasrah. Shahira Jebara's offense level was 16. She had a criminal history category of I. The court granted a downward departure by four levels due to extraordinary family circumstances. The family circumstances of Inam Manasrah are far more dire than those of Shahira Jebara and Inam Manasrah's offense level is four points lower. Like Shahira Jebara, Inam Manasrah's offense does not reflect a threat to the community.

There are three main considerations for the court when determining whether to grant a downward departure based on family circumstances. *United States v. Pearson*,

282 F. Supp. 2d 941, 943 (E.D. Wis., 2003) *citing United States v. Norton*, 218 F. Supp. 1014, 1018 (E.D. Wis. 2002).

First, the court must consider the specifics of the defendant's family situation – how many dependants does she have; what is her role in their lives; do they have special needs or disabilities; are there others available to fill the void should the defendant go to prison. *Id.*

Second, the court should consider whether the guideline range is such that a reasonable departure will spare the defendant's family from necessary hardship. A departure cannot be justified when, even with the reduction, the sentence is so long that the defendant's release will come too late to assist the family. *Id.*

Third, the court should consider the purposes of sentencing – the need for just punishment, protection of the public, deterrence, and rehabilitation of the defendant. *Id.* “If the nature of the offense and the character of the defendant tend to show that no end other than punishment will be served by imprisonment, if there is no threat to the community, and if society will ultimately benefit by allowing the defendant to care for his or her family, a departure is warranted.” *Id. citing United States v. Gaskill*, 991 F. 2d 82, 86 (3rd Cir. 1993) and *United States v. Pena*, 930 F.2d 1486, 1494 (10th Cir. 1991).

The specifics of Inam Manasrah's family situation are not pleasant. She has six children. Her youngest child is two and her oldest is sixteen. Inam is married to Munir Manasrah. Munir, in front of his own relatives, physically and mentally abuses his wife and children.¹ Munir abuses his wife and children because he can. Inam and their children

¹ The presentence writer in ¶85-88 interviewed persons who substantiated that Inam and her children are physically and mentally abused by her husband. Neither the presentence writer nor counsel for Inam Manasrah have interviewed her husband, Munir Manasrah for fear that such an interview would result in additional abuse to Inam Manasrah.

are his property. Munir, from his perspective, married a “cripple.” She was "damaged goods." No one else would have married her. Since their 1991 arrival in America, Inam has been pregnant, disabled by surgery, or both. Inam knows no English. She has never been to a movie theatre. She has never gone out for a cup of coffee with a girlfriend. When Inam was pregnant with their second child, she had a miscarriage in her final month of pregnancy. *You whore*, he screamed at her in Arabic, as she almost bled to death on the kitchen floor, following a wedding they had just attended. He said: *You danced like a whore and this is Allah’s revenge*. Whether it was the accidental fall down the stairs on their way to their basement apartment, or the revenge of Allah which caused the miscarriage, all who hear the story seethe with rage that a man could do and say such things to the mother of his own children.

Munir’s cousin employs him as a laborer. Munir makes \$2500.00 per month. He and his family live in a two-bedroom apartment. According to paragraph 97 of the PSR, the family has exactly \$90.00 per month for discretionary expenditures. Munir has always blamed his wife for their financial situation. For Munir, had he not married a woman whose family gave her away to get rid of her, he would have had a greater nest egg to start a new life in America. With the arrival of each new child, Munir’s anger has deepened. Munir has taken out on his children, his own disappointment with his inability to become financially successful. Munir has never been to one parent teacher conference, one visit to the pediatrician or cooked a single pot of rice. That said, even the smallest slight of behavior on the part of either the boys or the girls, such as playing with their food, can trigger a punch to the face or a kick to the stomach. *You are stupid and ugly like your mother*, he has been known to scream as he hits and kicks his children to the

ground or punches them in the head and stomach. *You will be nothing—just like your mother!* Inam continues to wear the traditional clothing of her culture. It is her mask. She reports it also covers up her bruises.

Inam has not told her husband she has entered a plea of guilty. Throughout the entire time this case has been pending, Munir has told his wife and his own family that should the court reincarcerate Inam he will take the children to his parents in the West Bank.² Munir articulates to his relatives who live in the United States that his wife has brought shame to the family and that if she goes to jail, he will ensure that she never sees her children again.

Munir is serious.

According to his cousin, he has contacted his family in the West Bank and has indicated that Inam may not be able to take care of the children. Further inquiry by his relatives was cut off when Munir said: *I cannot talk about it.* Relatives of Munir's in the West Bank have been left to wonder whether Inam is ill or perhaps been unfaithful. They do not know she has been indicted or plead guilty to coupon fraud. Since Inam's guideline level is 12, a family circumstances departure would make all of the difference in the world to Inam. If Inam is incarcerated, the only person who could take the children is her husband and he would surely take them! Inam's brother has eight children of his own and takes care of their mother who is disabled and ill. Inam's sister died in 1997. During Inam's initial incarceration before her family borrowed the money for her bond, the children were cared for by a woman named Fawzia. Inam, through her counsel,

² Inam, as a result of a plea to an information where the crime occurred more than five years after her last reentry to the United States is not subject to deportation. However, if Inam leaves the United States she is barred from re-entering for life. Inam believes that exposing her children to the violence of daily life in the West Bank is a risk to great for a mother to take on behalf of her children.

subsequently provided information to the government which implicated Fawzia in this coupon fraud. Thus, placement of the children with Fawzia is no longer possible even if her husband were made to keep the children in America.

Inam cut coupons. Medre showed her which ones to cut and she cut and cut and cut. She was paid by the pound. She and some other Arab women would sit in her apartment and cut and talk. For the first time Inam felt like she had friends and that she wasn't alone. Inam's house became the place the other women would come to cut when another co-conspirator's husband demanded that the cutting cease at his house. Because Inam was illiterate, completely unassimilated and desperate to please her husband by adding some money to the household, she was an ideal *mark* for those who convinced her that the cutting should happen at her house. Without knowing the particulars, she took risks others smarter and more assimilated were unwilling to take. When the government came to her door they found coupons—lots of coupons! She was asked by her counsel in an early interview: *Who lost money as a result of the coupon fraud?* She replied, *the newspapers lost money. I didn't pay for the newspapers.* Prior to cutting coupons for Jebara, Inam had never used a coupon—manufacturer or otherwise. She cannot read Arabic or English. She and her family received food stamps. Inam did not know that she could increase her family budget by using coupons with the food stamps. And thus, she never used coupons prior to being introduced to them by the Jebara organization.

Inam, in her own eyes and in the eyes of her abusive husband, has brought irrevocable shame to the family. Though a court is yet to sentence Inam, day in and day out, she has experienced the punishment of an abusive husband who threatens to take away her children if she goes to prison. Inam acknowledges that her conduct was wrong.

The public is not any danger if Inam remains at home. Inam's brother has avowed to keep his sister safe. He has promised to cajole her into taking classes to learn the language of the country for which her children are citizens. Her brother has commenced the search for a social worker that can teach Inam the difference between duty and love. Inam cares for her husband out of duty. Inam cares for her children out of love.

It is requested that this court grant a downward departure pursuant to U.S.S.G. §§ 5K2.0 and 5H1.6. To call Inam's family circumstances extraordinary or unusual is an exercise in understatement.

They are tragic and it is sad.

On behalf of Inam Manasrah, it is requested that this court exercise the limited discretion it has under the United States Sentencing Guidelines and allow her to stay with her children to ensure that her abusive husband does not take them away.

Dated this _____ day of November 2004.

Respectfully Submitted,

Robin Shellow
Wis. Bar No. 1006052
Counsel for Inam Manasrah

The Shellow Group
324 West Vine Street
Milwaukee, Wisconsin 53212
(414) 271-8535