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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MD

Date:

IN RE:

[Redacted]

OCT 29 2004

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ireland who was found to be inadmissible to the United States under 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 is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated June 18, 2002.

On appeal, counsel states that denial of the appeal will cause irreparable harm to the applicant's wife. *Form I-290B*, dated June 17, 2002.

In support of these assertions, counsel submits a letter from the applicant's spouse, dated August 13, 2002; copies of articles addressing country conditions in Ireland relating to widespread alcoholism; a copy of a letter from Brother Alexis Norton, dated June 6, 2000 and a copy of a letter from Sister [REDACTED] dated June 6, 2000. The entire record was considered in rendering this decision.

The record reflects that on or about January 17, 1997, the applicant was convicted on charges of larceny, handling of stolen property, forgery, obtaining by virtue of forged documents and breach of recognizance. The applicant "received a sentence of twelve months imprisonment on one charge, six months imprisonment consecutive on another, six months concurrent on forty eight other, has one charge proved taken into consideration and six others struck out." *Letter from John J. Browne, District Court Clerk*, dated June 29, 1999.

Section 212(a)(2)(A) of the Act states in pertinent part:

(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 . . . or an attempt or conspiracy to commit such a crime . . . 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 . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States . . .

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) . . . of subsection (a)(2) . . . if -

....

(1)(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 section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel contends that the applicant's spouse will suffer extreme hardship if she relocates to Ireland to remain with the applicant. The applicant's spouse states that she has fought a difficult battle to overcome alcoholism. *Letter from Elise Ambrose*, dated August 13, 2002. She provides copies of 12 articles from Irish sources documenting the widespread alcoholism present in Ireland and contends that she is unable to live there with the applicant because the culture would result in her inevitable return to drinking excessively. *Id.* Counsel further asserts that the applicant's spouse has recently regained relationships in the United States that were lost as a result of her alcoholism and does not want to abandon them. *Rebuttal of Derogatory Information and Support for Waiver Request in Connection with Application for Permanent Residence of John A. Wall - A # 75 960 516*, dated June 8, 2000. Counsel indicates that the applicant's spouse enjoys a close relationship with her father who resides in the United States and that she benefits from the presence of her family support network in the United States. *Id.* Counsel further asserts that the applicant's spouse would be unable to earn as much income in Ireland as she does in the information technology industry in the United States. Counsel states that the applicant's spouse needs to a position that provides sufficient income for paying off the debts she accrued as a result of her alcoholism. *Id.*

Counsel fails to establish that the applicant's spouse will suffer extreme hardship if she remains in the United States maintaining her proximity to family members and friends, lucrative employment and residence in a country free of widespread alcoholism. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will likely endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO acknowledges counsel's assertions with regard to the applicant's background and upbringing. The record reflects that the applicant suffered abuse at the hands of his parents throughout his childhood potentially leading to his alcoholism and his subsequent criminal record. *Rebuttal of Derogatory Information and Support for Waiver Request in Connection with Application for Permanent Residence of John A. Wall – A # 75 960 516* at 1-12. Counsel contends that the applicant's complete rehabilitation and the favorable impact that the applicant has had on his community are factors weighing in favor of a waiver of his inadmissibility. *Id.* at 11. While finding these arguments compelling, the AAO does not reach them as the record, as discussed above, fails to demonstrate the initial threshold of extreme hardship to the applicant's spouse. A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.