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U.S. Department of Justice  
Immigration and Naturalization Service

112

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File: [Redacted]

Office: HARTFORD, CT

Date: FEB 05 2003

IN RE: Applicant: [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)

IN BEHALF OF APPLICANT:

[Redacted]

**INSTRUCTIONS:**

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Boston, Massachusetts, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Lebanon who was found by the district director 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 married to a citizen of the United States and seeks a waiver of inadmissibility as provided under section 212(h) of the Act, 8 U.S.C. 1182(h), in order to remain in the United States and adjust his status to that of a lawful permanent resident.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that the applicant's spouse, a thirteen-year veteran with the U.S. Department of Defense who suffers from a severe debilitating medical condition, would suffer economic, psychological and emotional hardships if the applicant were removed from the United States. Counsel asserts that if the applicant's spouse were to relocate abroad with the applicant, she would jeopardize her employment earnings and benefits in the United States. In addition, counsel asserts that Lebanon is a dangerous environment and the spouse would have difficulty seeking and obtaining comparable employment in that country due to its social and economic conditions. On appeal, counsel also asserts that if the applicant's spouse remains in the United States separated from the applicant, she would suffer economic hardship without his financial assistance and psychological and emotional devastation due to separation from him. In support of the appeal, counsel submits a brief and documentation including a report on country conditions in Lebanon, a physician's statement regarding the applicant's spouse, and information concerning the spouse's mortgage.

The record reflects the following regarding the applicant's criminal history:

On April 18, 1989, he was found guilty of Sale of Alcohol to Person Under 21.

On May 28, 1990, he was charged with Battery (Domestic). The record notes a disposition of "P.T.I. Agreement, 12 Mos Prob W/Sal Army, Inv/Pros Fees \$100, No Violence Toward Victim Ordered, Case Closed. (11/1/90)."

On March 31, 1990, he was charged with Battery. The record notes a disposition of "P.T.I. Agreement, 12 Mos Prob W/Sal Army, Inv/Pros Fees \$100, No Violence Toward Victim. (11/01/90), Nolle Prose (03/20/92)."

On September 26, 1990, he was found guilty of Sale of Alcohol to Person Under 21.

On December 20, 1990, he was charged with Battery (Domestic). He was adjudicated guilty and the case was closed on August 4, 1993.

On April 30, 1991, he was charged with Child Abuse. The record notes a disposition of "Nolle Prose (01/09/92)."

On May 13, 1992, he was charged with Battery (Domestic). The record notes a disposition of "D.P.A. Agreement, 12 Mos Prob, Monthly Prob Fees \$40. 20 Hrs Comm Serv, Spouse Abuse/Marriage Con, Case Closed. (08/17/92)."

On July 15, 1994, he was charged with Battery (Domestic). he was adjudicated guilty and the case was closed on December 28, 1995.

On November 12, 1994, he was charged with Battery (Domestic). He was adjudicated guilty and the case was closed on December 28, 1997.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-  
Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

\* \* \*

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such 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 states:

The Attorney General may, in his discretion, waive application of subparagraphs (A)(i)(I). . .

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

(i)...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 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; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, less than 15 years have passed since the applicant's last conviction. Therefore, he is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or

prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See Fiallo v. Bell, 430 U.S. 787 (1977); Reno v. Flores, 507 U.S. 292 (1993); Kleindienst v. Mandel, 408 U.S. 753, 766 (1972). See also Matter of Yeung, 21 I&N Dec. 610, 612 (BIA 1997).

The record reflects that the applicant and his spouse were married in 1997. They have no children. The applicant's spouse is employed as a procurement clerk with the U.S. Department of Defense and is a member of the U.S. Army Reserves. In 1999, she purchased a home, in her name only, with a \$77,500.00 mortgage. There is no information contained in the record concerning the applicant's employment.

The record contains a physician's letter indicating that the applicant's spouse suffers from depression and anxiety disorder and has frequent attacks, precipitated by stress, during which she experiences palpitations, becomes extremely dizzy, and develops a severe headache. The spouse states that if the applicant is removed from the United States, her anxiety attacks would increase both in intensity and frequency because he helps to alleviate them and she would have the additional fear for his safety in Lebanon.

There are no laws that require the applicant's spouse to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). 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. See Shoostary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

A review of the factors presented, and the aggregate effect of those factors, indicates that the applicant's spouse would suffer hardship due to separation from her spouse if he were removed from the United States. The applicant has failed, however, to show that the qualifying relative would suffer extreme hardship over and

above the normal disruptions involved in the removal of a family member.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.