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U.S. Department of Justice
Immigration and Naturalization Service

**Identifying data deleted to
prevent identity information
invasion of personal privacy**

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

[Redacted]

JAN 08 2003

FILE: [Redacted] Office: Los Angeles

Date:

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]

PUBLIC COPY

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

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Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Taiwan 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 unmarried daughter of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her lawful permanent resident mother and denied the application accordingly.

On appeal, counsel states that the Service has denied the application based upon misinterpretation and misapplication of the existing law and its intent. Counsel reviews the standards for determining "extreme hardship" as illustrated in case law relating to former suspension of deportation matters. Counsel alleges that the applicant's mother will experience extreme hardship if the applicant is removed. Although the mother has three daughters and one son living nearby who are gainfully employed, they all insist that they are unable to help their mother. Affidavits in the record assert that the applicant is the only person who can help the mother with her daily and vital tasks.

The record reflects the following:

In 1991, the applicant was convicted of petty theft. She was placed on probation for one year and fined.

In August 1997, the applicant was arrested and charged with a violation of section 459-PC-Misd-Burglary. On January 26, 1998, she was convicted of the charge. Imposition of sentence was suspended and the applicant was placed on summary probation for a period of three years under the following terms and conditions; to serve 30 days in jail less credit for one day and pay a fine of \$300.00. She was also ordered to enroll in and complete the Criminon Counseling Program.

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

(A)(i) Except as provided in clause (ii), any 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 part, that:-The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I),...or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(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 for adjustment of status....

Here, fewer than 15 years have elapsed since the applicant committed the last violation. Therefore, the applicant is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude. In addition to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009, this intent was recently seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214, which relates to criminal aliens. 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).

On appeal, counsel refers to the issue of "extreme hardship" as that term was applied in matters involving suspension of deportation under former section 244 of the Act, 8 U.S.C. § 1254, prior to its amendment by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and recodification under section 240A of the Act, 8 U.S.C. 1230A, and redesignation as "cancellation of removal." Matter of Piltch, 21 I&N Dec. 627 (BIA 1996); Matter of Anderson, 16 I&N Dec. 596 (BIA 1978).

In Matter of Kao, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals (BIA) held that the standard used in determining "extreme hardship" in applications for suspension of deportation is also applied in adjudicating petitions for immigrant status under section 204(a)(1) of the Act, 8 U.S.C. § 1154(a)(1), and waivers of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Associate Commissioner does not suggest that the term "extreme hardship" has two different meanings and is in agreement with the holding in Matter of Kao. However, it is clear from the statutes concerning both section 212(i) and former section 244 of the Act that the scope of application of that term, in what was formerly called suspension of deportation, was much broader. In the present proceedings and in section 212(h) proceedings, a finding of "extreme hardship" is only applicable to a spouse, parent, son or daughter of a United States citizen or lawfully resident alien. Hardship to the alien, the alien's age, health, or length of residence are not considerations.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission 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).

Although it is asserted that the mother could not survive for a prolonged period of time in Taiwan because she has no savings or residence there, there are no laws that require a United States citizen or a lawful resident alien who is not in removal proceedings to leave the United States and live abroad. Further, with four children living legally in the United States, the

suggestion that the mother will be faced with a decision to leave the United States and return to Taiwan is unfounded.

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.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship over and above the normal economic and social disruptions involved in the deportation of a family member that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

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. 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.