



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536



FILE: [Redacted] Office: Miami

Date: **JAN 10 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:



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 Acting District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Germany 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 married to a United States citizen and is the beneficiary of a Petition for Alien Relative. He seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. 1182(h), to reside with his spouse in the United States.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his United States citizen wife and denied the application accordingly.

On appeal, counsel states, "New evidence not previously available; change in circumstances in past 10 days." Counsel also requested 90 days to submit a brief. It has been six months since the appeal was filed and no additional evidence has been entered into the record.

The applicant was admitted to the United States, as a nonimmigrant visitor on January 7, 1986, with authorization to remain until July 6, 1986. He remained longer than authorized without applying for or receiving an extension of temporary stay. His previous wife, Anke Breuer-Neumann, hereafter referred to as Anke, was admitted in August 1985 as a nonimmigrant visitor. They established a cleaning service in March 1986 and worked without Service authorization. On October 23, 1990, both the applicant and his wife were served with an Order to Show Cause. On September 22, 1993, the applicant and Anke were found deportable by an immigration judge who denied their applications for suspension of deportation. They were granted until November 22, 1993, to depart the United States voluntarily in lieu of deportation. That decision was affirmed by the Board of Immigration Appeals (BIA) on October 2, 1995. The BIA granted them 30 days from the date of the order to depart voluntarily. The applicant failed to depart by that date.

On August 29, 1991, the applicant was convicted of the charge of fraud in obtaining a Florida driver's license, a third degree

felony. Adjudication was withheld, he was placed on probation for two years and fined.

In an attachment to the I-601 waiver application counsel stated that the applicant is not inadmissible as he falls under the special provisions of section 212(a)(2)(A)(ii)(II) of the Act in that he had only been convicted of one crime, which he described as a misdemeanor, and the maximum penalty did not exceed imprisonment for one year. Documents in the record, however, show that the applicant was convicted of a 3<sup>rd</sup> degree felony which under Florida statutes carries a maximum term of five years imprisonment. The applicant is therefore, inadmissible.

The record further reflects that the applicant divorced Anke Neumann on December 21, 1995, using the name John Neumann. On February 2, 1996, the applicant married Bernice Nichols. That marriage was terminated on September 4, 1996. He married Bernice Nichols again on November 26, 1997.

The record reflects that the applicant remained in the United States until July 1997 when he returned to Germany for approximately two months. He procured admission into the United States on September 3, 1997, under the Visa Waiver Pilot 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;...

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).

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). "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).

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The court held in INS v. Jong Ha Wang, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

There are no laws that require a United States citizen 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 Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994).

The applicant provided no statement regarding any hardship his wife would suffer if he were to leave the United States or if she were to accompany him to Germany.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his wife would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The burden of proving eligibility in this proceeding 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.