

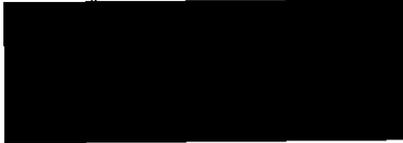


U.S. Department of Justice  
Immigration and Naturalization Service

*HJ*

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



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prevent clearly unwarranted  
invasion of personal privacy**

File:  Office: MADRID, SPAIN

Date: **JAN 14 2003**

IN RE: Applicant: 

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: SELF-REPRESENTED

**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 Officer in Charge, Madrid, Spain, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Morocco who was found by a consular officer 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 and father of United States citizens and is the beneficiary of an approved 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) in order to travel to the United States to reside.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, the applicant asserts that denial of his waiver request is inappropriate because all of the criteria for establishing extreme hardship were met. He asserts that the officer in charge clearly did not review and take into consideration the information provided. On appeal, the applicant submits documentation including a statement; a letter and an affidavit, with supporting documentation, from his spouse; information from a Moroccan attorney concerning Moroccan laws relating to the applicant's conviction; letters of reference and certificates of good behavior; and a psychological evaluation of his spouse.

The record reflects that the applicant was convicted of kidnapping and rape on April 12, 1995 in Morocco. He was sentenced to imprisonment for a term of two years. In January 2002, a Moroccan court granted the applicant's "rehabilitation petition," clearing his criminal record.

On appeal, the applicant states that he is not a criminal. He indicates that he was involved with a woman for three years in a consensual sexual relationship, that she became pregnant, and that she consequently accused him of kidnapping and rape because he didn't want her to have the child and was not ready to get married. He further asserts that his conviction occurred a long time ago during a period when Morocco was known for its dishonest judges and corruption, and that the same tribunal that convicted him has decided to give him his rights back and clear his record.

It is noted that under the statutory definition of the term "conviction," no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Once an alien is subject to a "conviction" as that term is

defined in section 101(a)(48)(A) of the Act, the alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt through a rehabilitative procedure.

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),...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.

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, fewer than fifteen years have elapsed since the applicant was convicted of a crime involving moral turpitude. 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 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).

The record reflects that the applicant and his spouse were married in Morocco in September 2000. The couple has one child, a daughter

born in July 2001. On appeal, the applicant's spouse submits a statement detailing the circumstances of how she met and married the applicant, information about her prior employment with the United Nations, her temporary stay in Morocco to study French, the couple's decision to return to the United States to give birth to their child and arrange for accommodations and employment, the couple's efforts to have the applicant's criminal record cleared in Morocco, and their efforts to obtain an immigrant visa and waiver of inadmissibility on behalf of the applicant.

The spouse states that it is not economically viable for the couple to raise their daughter in Morocco because the applicant does not make enough to support the family at a standard of living that would be considered a bare minimum by the average American. She states that she does not speak Arabic, has no family or friends in Morocco, and the cultural differences regarding the role of women are difficult; that she had a thriving career in the United States and it would be impossible for her to find work of any kind in Morocco; and that the couple would be unable to afford good education for their daughter or private health care on a long-term basis in Morocco. Furthermore, the spouse states that the couple's daughter would be stigmatized as an American in Morocco and that, given current events in the world, the environment in that country would not provide the spouse and child with long-term safety and security.

With regard to living in the United States without the applicant, the spouse indicates that she is suffering financial and emotional hardships. She states that she had to sell her apartment in New York because she needed ready access to cash and that she is moving to Ohio where rents are significantly lower and she has family. She states that for all intents and purposes, her career is finished because she is unable to continue as a single mother without the assistance of the applicant. She states that if the applicant were permitted to immigrate to the United States, she would not have to sacrifice her career and comfortable salary as the applicant would handle the majority of child-care responsibilities.

A psychological evaluation of the applicant's spouse dated May 10, 2002 reports that the spouse currently feels intense grief and a sense of mourning because of separation from the applicant. She states that she is suffering symptoms of acute depression, is unable to sleep at night, and feels alone, isolated, and extremely scared. The psychologist concludes that the spouse is in acute psychological distress, caught in an emotional bind that she feels is affecting both her emotional and physical health and, in turn, would impact her daughter.

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. 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).

There are no laws that require the applicant's spouse and child to leave the United States and relocate abroad. 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."

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.

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 social and economic disruptions involved in separation 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. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.