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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

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APR 05 2004

[redacted]

FILE: [redacted] Office: MIAMI, FL Date:

IN RE: [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)

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 Acting District Director for Services, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bangladesh 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 an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States with his spouse.

The acting 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. *See* Decision of the Acting District Director, dated May 7, 2003.

On appeal, counsel contends that Citizenship and Immigration Services did not consider that the applicant attempted to rehabilitate his wife from her drug dependency. Counsel asserts that the applicant is in the process of locating his wife so that he may return her to Florida. Counsel asserts that the applicant's U.S. citizen spouse clearly needs his assistance. *See* Form I-290B, dated June 5, 2003.

The record contains an affidavit of the applicant's spouse, dated May 15, 2001; copies of financial and tax documents for the applicant and his spouse; copies of court documents relating to the criminal record of the applicant; copies of court records relating to the criminal history of the applicant's spouse and copies of missing persons reports filed with the Miami-Dade Police Department regarding the applicant's spouse. The entire record was considered in rendering a decision on the appeal.

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.

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 . . .

On November 3, 2000, the applicant was convicted of Grand Theft in the Third Degree in the Circuit Court in and for Broward County, Florida.

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.

The record reflects that the interview phase of the application for waiver and adjustment of status was continued on three different occasions owing to the medical condition of the applicant's spouse and her subsequent disappearance. The record establishes that the applicant's spouse has been missing since March 2002. The record contains an affidavit of the applicant's spouse submitted prior to her disappearance stating, "I am totally dependent on my husband." *See* Affidavit of [redacted] dated May 15, 2001. The assertions of dependency by the applicant's spouse are rendered less compelling by the fact that she has been separated from him for approximately two years without contact. The AAO sympathizes with the applicant's plight; however, the record does not establish that he has succeeded in assisting his wife battle her drug addiction as contended.

The record reflects that the parents of the applicant are in the process of becoming legal permanent residents of the United States. The record fails to establish that the parents of the applicant have completed the process and obtained designation as legal permanent residents. The applicant's parents, therefore, cannot be considered qualifying relatives for purposes of the waiver proceeding.

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(i) 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.