



U.S. Citizenship  
and Immigration  
Services

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C

[Redacted]

FILE:

[Redacted]

Office: HONOLULU, HAWAII

Date:

10/15/14

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).

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 District Director, Honolulu, Hawaii, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Australia who was found to be inadmissible to the United States pursuant to 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 (CIMT). The applicant is the beneficiary of an approved petition for alien relative filed by his U.S. citizen spouse. The applicant 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 and reside with his U.S. citizen spouse and child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying family member and denied the application accordingly. *See District Director's Decision* dated June 7, 2002.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) misapplied the extreme hardship standard set forth in section 212(h) of the Act, and that the applicant satisfied the favorable discretionary factors in order to establish that a favorable exercise of the Secretary's discretion is warranted.

Before the AAO can weigh the favorable and unfavorable factors in this case it must first determine if a qualifying family member would suffer extreme hardship if the applicant's waiver application were not approved.

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

(A)(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 (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 pertinent part, that:

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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 . . . .

The record reflects that on February 23, 1993, the applicant was convicted of two counts of assault and one count of malicious damages. He was sentenced to eighteen months of good behavior, pay compensation and not to assault, molest or harass the victims. The applicant is inadmissible to the United States due to his convictions of crimes involving moral turpitude pursuant to section 212(a)(2)(A)(i)(I) of the Act.

As noted above section 212(h) of the Act provides that a waiver of the bar to admission resulting from 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. 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).

On appeal counsel submits a brief in which he states that the applicant's spouse [REDACTED] and child would suffer financial hardship if the applicant were not permitted to remain in the United States. Counsel states that the applicant is the main source of income to support the family and that [REDACTED] is presently unemployed, taking care of the couple's U.S. citizen child. Counsel does not submit any documentation regarding [REDACTED] financial situation or any evidence to show why [REDACTED] would not be able to work full time in order to provide for herself and her child.

Although counsel alleges financial hardship in this matter, in *Shoostary v INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court stated that the "extreme hardship requirement of section 212(h)(2) of the Act was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy."

The record of proceedings does not make it clear whether the applicant's spouse and child would follow him to Australia if he were removed. If [REDACTED] and her child were to relocate with the applicant to Australia, it would be expected that some economic and cultural difficulties would arise. No evidence exists that this will impact them at a level commensurate with extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that 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. The U.S. Supreme Court additionally 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 reflects that the applicant has failed to show that his U.S. citizen spouse or child would suffer extreme hardship if he were removed from the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility 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.