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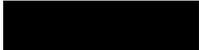
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DEC 21 2004

FILE:



Office: LOS ANGELES DISTRICT OFFICE

Date:

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



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.

Handwritten signature: Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Taiwan. The applicant was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). The record reflects that the applicant is the spouse and mother of U.S. citizens. She seeks a waiver of inadmissibility to remain in the United States with her family and adjust her status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an immediate relative petition filed on her behalf by her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and son and denied the application accordingly.

On appeal, counsel contends that the applicant established that her qualifying family members would suffer extreme hardship if she is refused admission. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

(i) In general.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the 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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correction institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed).

8 U.S.C. § 1182(a)(2)(A). The district director based the finding of inadmissibility under this section on the applicant's three convictions for criminal offenses, including two convictions for misdemeanor theft of property in 1995 and 1997 and one conviction for child endangerment in 1995. The applicant has been convicted of more than one offense and the "single petty offense exception" noted above at INA § 212(a)(2)(A)(ii) does not apply. The district director's determination of inadmissibility is not contested by the applicant. Section 212(h) of the Act provides, in pertinent part:

The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] 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 [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;

. . . and

(2) the [Secretary], 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 adjustment of status. . .

8 U.S.C. § 1182(h). As less than 15 years have passed since the applicant's convictions, she is statutorily ineligible for a waiver under INA § 212(h)(1)(A). A section 212(h)(1)(B) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident spouse, parent, or child of the applicant. Hardship to the alien herself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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).

The record indicates that the applicant’s spouse [REDACTED] is a 37-year-old naturalized U.S. citizen who was born in Taiwan. His mother and father live in Taiwan, as do the applicant’s mother and father. [REDACTED] married the applicant in 1993 in Taiwan. He immigrated to the United States in 1994 and became a U.S. citizen in 1999. The couple has a 10-year-old U.S. citizen son. The record indicates that the applicant graduated from junior college in Taiwan. *Household Registration, Second Wenshan District, Taipei* (April 28, 1994).

Counsel asserts that if the applicant is refused admission, her husband and child “will face cultural shock, a lower standard of living, diminished job opportunities to the husband’s detriment, uprooting, loss of the husband’s supermarket managerial job, substantially diminished educational and economic opportunities for [the applicant’s child] who does not read or write Mandarin Chinese. The foregoing constitutes great actual and prospective injury to the both of them who are U.S. citizens.” *Petitioner’s Brief on Appeal* (June 26, 2003), at 2. The AAO notes that the record contains no evidence of country conditions to support the

contentions of counsel surrounding difficulty of cultural adjustment, lower standard of living, diminished job, educational or economic opportunities. Evidence of hardship submitted in connection with the waiver application and appeal consists of affidavits from [REDACTED] and the applicant. [REDACTED] indicates that the family home is in the applicant's name, and expresses concern that if he leaves the United States he will lose his job and have difficulty finding employment in Taiwan. Both express concern that their child will be disadvantaged in school due to his inability to read and write Chinese and that relocation to Taiwan or separation from his mother will interrupt his socialization and close relationship with his parents. [REDACTED] also expresses concerns about his ability to manage as a single parent working full-time. The record also contains a letter of reference from the applicant's church, attesting to her activity in the church. Financial documents submitted in connection with the *Affidavit of Support* (Form I-864) indicate that [REDACTED] supplies 100% of the household's approximately \$39,000 annual income.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] and the applicant's son face extreme hardship if the applicant is refused admission. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the Ninth Circuit places particular emphasis on consideration of the impact of separation of the family, the waiver is nevertheless not to be granted in every case where possible separation is at issue. In this case, the record does not demonstrate extreme hardship if the applicant's spouse and child relocate to Taiwan to avoid separation from the applicant. Although the applicant's 10-year-old son has not previously lived in Taiwan and does not read or write Mandarin, the applicant, her husband, and the grandparents on both sides constitute substantial family support who speak Mandarin and are relatively recently acquainted with the culture in Taiwan to help the child adjust and learn the language. There is no evidence that the child has family ties in the United States other than his parents. Further, inability to pursue one's chosen career, readjustment to one's home country, or reduction in standard of living does not necessarily result in extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . 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 uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are

not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”)

If they remain in the United States, [REDACTED] appears to have sufficient financial resources of his own to arrange for periodic visits to the applicant to mitigate the effects of separation of the applicant's child from his mother. The applicant previously worked in Taiwan as the “Vice Section Chief of Sales 4th Dept., Tonlin Department Store.” *Household Registration, Second Wenshan District, Taipei* (April 28, 1994). It therefore appears that she could be gainfully employed in Taiwan and that her return there would not impose a significant financial hardship on [REDACTED] if he chooses to remain in the United States. The applicant's spouse faces, as all spouses facing deportation or refusal of admission of a spouse, the decision of whether to remain in the United States or relocate with his child to avoid separation. Given that there is no showing of extreme hardship to [REDACTED] and the couple's child if they relocate to Taiwan, refusal to relocate there is a matter of choice and does not, in this case, create a hardship rising to the level of extreme. *See Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965) (“The mere election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed.”)

The record does not contain sufficient evidence to show that the particular hardship faced by [REDACTED] and his son rises beyond common difficulties of separation or relocation to the level of extreme. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse and child as required under INA § 212(h), 8 U.S.C. § 1186(h).

In proceedings for application for waiver of grounds of inadmissibility under section 212 of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.