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FILE:



Office: VIENNA, AUSTRIA

Date:

APR 20 2005

IN RE:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

ORIGINAL COPY

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 Officer in Charge, Vienna, Austria. 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 Poland who is the son of a U.S. citizen and the beneficiary of an approved petition for alien relative. The applicant 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, namely, having attempted to secure credit at a store by using fraudulent documents. The applicant seeks a waiver of inadmissibility in order to immigrate to the United States.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen mother. The application was denied accordingly. On appeal, the applicant apologizes for his criminal behavior, and indicates that he greatly desires to be reunited with his mother in the United States. The applicant provides no evidence or statements in support of a claim that his U.S. citizen mother is suffering or will suffer extreme hardship on account of his inadmissibility.

The record contains a recent letter from the applicant's U.S. citizen stepfather to a U.S. congressman in which the former writes that the applicant wishes to withdraw his application for an immigrant visa. The AAO notes, however, that the applicant is the beneficiary of a petition filed by his mother; thus, only his mother can withdraw the petition. The applicant can withdraw the appeal of his application for a waiver of inadmissibility, but there is no such withdrawal on the record. The AAO reviewed the copy of an email message apparently written by the applicant to his stepfather; however, this does not appear to be a withdrawal request. The AAO has therefore proceeded with the adjudication of the appeal.

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

(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) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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.

The applicant was convicted in Poland in 1998 of having attempted to fraudulently procure credit at a store for the purchase of merchandise. Given that his actions occurred less than 15 years prior to this adjudication, the applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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. Moreover, 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.

In a letter dated December 20, 2003, the applicant's mother and stepfather wrote that the applicant's mother suffers extreme hardship due to the separation from the applicant. It appears that the hardship referred to in this letter is of an emotional nature. The AAO recognizes that the applicant's mother endures psychological stress in the face of the physical distance between her and the applicant. However, as noted above, the separation of family members can usually be expected to cause emotional stress, and, absent evidence that such stress exceeds the norm, it cannot be considered to constitute extreme hardship. In the case at hand, the applicant has failed to submit documentation showing that the emotional stress his mother suffers causes her psychological or medical consequences requiring treatment or therapy, or that she is unable to function normally on account of the applicant's absence.

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 mother would suffer hardship that was unusual or beyond that which would normally be expected upon removal. 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 § 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.