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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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FILE:



Office: VIENNA SUB OFFICE

Date:

AUG 31 2005

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).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Officer in Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania who was found to be inadmissible to the United States pursuant to 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 crimes involving moral turpitude. The applicant was further found inadmissible pursuant to section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having been convicted of multiple criminal offenses. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to enter the United States in K-3 status to be with his U.S. citizen spouse and adjust his status to permanent resident.

The Officer in Charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 13, 2004.

On appeal, the applicant contends that he has reformed himself since his criminal activity, and that his spouse will suffer hardship if he is prohibited from entering the United States. *Statement from Applicant in Support of Appeal*.

The record contains a statement from the applicant; a statement from the applicant's spouse; copies of photographs of the applicant and his spouse; a copy of the marriage certificate of the applicant and his spouse; a copy of the U.S. passport of the applicant's spouse; copies of documents showing that the applicant's spouse purchased a condominium; a copy of the applicant's spouse's 2002 IRS Form 1040, U.S. Individual Income Tax Return, and; copies of documents reflecting the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

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.
 - ...
- (B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . of subsection (a)(2) . . . 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
 - (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 [now the Secretary of Homeland Security (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 the applicant was convicted of six crimes committed between March 1995 and October 1997. At least three of these offenses involved theft, and thus they constitute crimes involving moral turpitude. Accordingly, the applicant has been found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant has been sentenced to a total of nine years of imprisonment (although his sentences have been merged to reduce his period of confinement to five years and six months.) As the applicant has been convicted of multiple crimes with an aggregate sentence of imprisonment totaling over five years, the applicant has been found inadmissible pursuant to section 212(a)(2)(B) of the Act.

The applicant claims that he has been reformed since his criminal convictions, and that his offenses should not serve as the basis for inadmissibility. However, rehabilitation can only serve as a basis for a waiver of inadmissibility if the applicant's offenses were committed more than 15 years prior to his application for a visa. Section 212(h)(1)(A)(i) and (ii) of the Act. As all of the applicant's criminal activity occurred less than 15 years prior to his application for a K-3 visa, he is not eligible for a waiver based on his rehabilitation or subsequent good conduct. Thus, the applicant must establish that he meets the requirements of section 212(h)(1)(B) of the Act in order to show eligibility for a waiver.

Under section 212(h)(1)(B) of the Act, a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only

relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse. Section 212(h)(1)(B) of the Act. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. *Id.*

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.

On appeal, the applicant contends that his wife will suffer hardship should he be prohibited from entering the United States. *Statement from Applicant in Support of Appeal*. The applicant indicates that his spouse has poor health, and that their separation is causing her additional health consequences. *Id.* The applicant states that he and his spouse lack material resources in Romania, and they would be compelled to reside in a two room apartment with his five brothers should they live there. *Statement from Applicant on Form I-290B*. In a statement from the applicant's spouse, she provides that she is suffering emotional hardship due to separation from the applicant. *Statement from Applicant's Spouse*, dated May 7, 2004. She states that she has resided in the United States for 12 years, she owns real estate, and her family members are also in the country. *Id.*

Upon review, the applicant has failed to show that his spouse will suffer extreme hardship should he be prohibited from entering the United States. The applicant indicates that his wife will suffer emotional hardship should he be prevented from joining her in the United States. However, the applicant has not established that these consequences go beyond those which are commonly experienced by the families of aliens deemed inadmissible. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th 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 (9th 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 applicant provides that his wife's health is poor, and their separation "has weakened her even more." *Statement from Applicant in Support of Appeal*. However, the applicant has provided no documentation to show that his wife is under treatment for any physical or mental health conditions, or to show that such conditions are exacerbated by their separation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant explains that he and his spouse have few economic resources in Romania, and that their living conditions there would be worse than in the United States. *Statement from Applicant on Form I-290B.* However, the applicant's spouse was born in Romania, and it is presumed that she resided there prior to the United States, she is familiar with the culture and language, and thus she would be able to secure employment there. Further, the record does not establish that the applicant's spouse will be unable to maintain her financial situation if she remains in the United States. The U.S. Supreme 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. The applicant has not shown that their lack of resources in Romania rises to the level of extreme hardship.

Based on the foregoing, the applicant has not shown that, should he be prohibited from entering the United States, his spouse will suffer emotional or economic hardship that is unusual or beyond that which would normally be expected upon deportation. The applicant has not established that his spouse's health status will result in extreme hardship due to his inadmissibility. Thus, 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(h) 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.