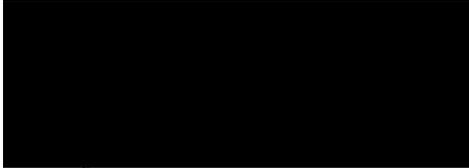




U.S. Citizenship
and Immigration
Services

identifying information collected to
prevent clear and unambiguous
invasion of personal privacy

PUBLIC COPY



H2

FILE: [REDACTED]

Office: FRANKFURT, GERMANY Date: **DEC 23 2005**

IN RE: [REDACTED]

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

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge, Frankfurt, Germany and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Germany who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation, and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude (multiple fraud convictions and a grievous bodily injury conviction). The applicant's spouse and her son are U.S. citizens and she seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(h) of the Act, 8 U.S.C. § 1182(i) and § 1182(h), in order to reside in the United States with her family.

The acting 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 Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer-in-Charge*, dated March 13, 2005.

On appeal, counsel asserts that the applicant should be granted a waiver of inadmissibility because her spouse and children will confront extreme hardship. *Brief in Support of Appeal*, at 2, dated April 11, 2005.

In support of these assertions, counsel submits the aforementioned brief, statements from the applicant and her spouse, statements from the U.S. Army, a medical summary for the applicant's daughter and a letter from the applicant's daughter's nurse. The entire record was reviewed and considered in arriving at a decision on 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) 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) . . . 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 the applicant was convicted of fraud on January 30, 1998 and November 12, 1999 and she was convicted of grievous bodily injury on November 24, 1998. These are convictions for crimes involving moral turpitude rendering her inadmissible under section 212(a)(2)(A) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The acting officer-in-charge found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for failing to mention her prior arrests when entering the United States in October 2000, on March 22, 2003 and on March 1, 2004 under the Visa Waiver Program. *Decision of the Acting Officer-in-Charge*, at 3. Furthermore, the acting officer-in-charge stated that the applicant was denied a visa in 2001 and she failed to indicate on her subsequent Form I-94W Arrival/Departure cards that she had been denied a visa or had been convicted of any crimes. *Id.* Although the record does not include evidence to verify all of these findings, there is evidence of a misrepresentation which makes the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. The record reflects that when the applicant attempted to enter the United States on March 22, 2001, she was referred to secondary inspection where the inspecting officer knew of her history of multiple arrests, however, she would not admit to her history of arrests, other than a DWI arrest in 1995. *Order to Appear Deferred Inspection*, dated March 22, 2001. Therefore, she misrepresented her arrest history to an immigration officer in order to procure admission into the United States.

A section 212(h) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or child of the applicant. A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established in the event that the qualifying relative resides in Germany or in the event that the qualifying relative resides in the United States, as the qualifying relative is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in Germany. This prong of the analysis is satisfied for the applicant's spouse as he is in the U.S. Army and the record indicates that he is subject to a permanent change of station from Germany to the United States. Therefore, he would be physically unable to reside in Germany due to his military commitment within the United States.

The record indicates that the applicant's daughter is residing in Germany, suffers from ADHD and receives free medical treatment and a tailored education based on the applicant's spouse's military employment in Germany. *Brief in Support of Appeal*, at 3. However, there is no indication that she is a qualifying relative (i.e. a U.S. citizen or a lawful permanent resident). Therefore, her hardship is only relevant to the extent it causes hardship to the applicant's spouse or U.S. citizen son. This type of hardship is not evidenced in the record. Assuming *arguendo* that she is a U.S. citizen, counsel states that she will lose her medical benefits upon departure of the applicant's spouse to the United States and alternative medical sources are most likely too much for the family to bear. *Id.* at 3. The AAO notes that there is no evidence regarding the cost of alternative medical sources and whether it would be a financial burden.

Counsel contends that the applicant's U.S. citizen son would suffer greatly from the loss of military benefits provided by the applicant's spouse upon his change of station to the United States and the child would experience great depression from the loss of his father. *See Id.*, at 3-4. The AAO notes that without documentary evidence to support the claims, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Based on the evidence presented, the applicant's son will not face extreme hardship if he resides in Germany.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative resides in the United States. Counsel asserts that the applicant's spouse would experience depression and anxiety if he were separated from his wife and children. *Id.* at 2. In addition, counsel states that the applicant's spouse would suffer financially as he will not have the income supplied by his wife. *Id.* at 3. Counsel states that if the children live with the applicant's spouse, he would be the sole provider and his salary is not enough to support them. *Id.* The record includes a letter stating that the applicant's spouse

would be responsible for two households and this would be a financial burden. *Letter from U.S. Army*, dated March 25, 2005. The AAO notes that there is no evidence of the applicant's income and whether she can contribute financially to the family nor is there substantiating documentation of extreme financial burden. Therefore, extreme hardship has not been shown in the event that the applicant's spouse resides in the United States.

Counsel asserts that if the applicant's U.S. citizen child resides in the United States, he will lose the love and financial support of his mother and have increased stress and anxiety. *Id.* at 3. The AAO notes that separation involves inherent problems which are common to those being separated. Therefore, extreme hardship has not been shown in the event that the applicant's son resides in the United States.

After a thorough review of the record, the AAO finds that extreme hardship has not established to a qualifying relative.

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 (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.

Moreover, the AAO notes that 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 AAO recognizes that the qualifying relatives will endure hardship as a result of separation from the applicant and is sympathetic to their situation. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relatives 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 she 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.