

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

A2

FILE:

[REDACTED]

Office: INDIANAPOLIS, INDIANA

Date: FEB 03 2005

IN RE:

[REDACTED]

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:

[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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Indianapolis, Indiana. 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 Morocco who is married to a U.S. citizen and that he is 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 (fraudulent use of a credit card). The applicant seeks a waiver of inadmissibility in order to reside with his wife in the United States.

The interim district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse, and the application was denied accordingly. On appeal, counsel asserts that whether the applicant's wife chooses to remain in the United States or relocate to Morocco to live with the applicant, the latter's removal will cause her to suffer extreme hardship. In support of his assertions, counsel submits several letters from the applicant's and his wife's friends and relatives, two letters from the applicant's wife, a letter from the applicant, a letter from a practicum therapist, a financial declaration from the applicant and his wife, a deed to their residence, and a letter from a licensed clinical social worker.

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 of fraudulent use of a credit card on May 31, 2000 and the petition for alien relative and adjustment of status application were filed in August 2001, less than 15 years after his conviction. The applicant is therefore 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.

Counsel asserts that the applicant's wife will suffer extreme hardship should she relocate to Morocco to live with the applicant. Counsel makes numerous assertions regarding social and religious circumstances in Morocco; however, the record contains no evidence in support of counsel's claims that the applicant's wife will be ostracized due to her Roman Catholic religion, blond hair and blue eyes, or her foreign origin. The record also fails to demonstrate that the applicant's wife, a former college student, is incapable of learning French and/or Arabic, making new friends, establishing a positive relationship with the applicant's family, or becoming familiar with Moroccan customs and culture. Indeed, the AAO notes that the fact that the applicant's wife deeply loves and cherishes the applicant can be expected to provide her with the motivation to accomplish these goals.

In addition, the record contains no evidence that the applicant's wife cannot function without the physical presence of her U.S. friends and relatives. The AAO acknowledges that the applicant's wife would greatly miss her U.S. family and friends; however, U.S. court decisions have held 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. Such commonly experienced results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The BIA held, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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.

On appeal, counsel also states that the applicant's wife may not be able to obtain the psychiatric care she requires in Morocco. However, since the record indicates that the applicant's wife is experiencing depression due to the prospect of separation from the applicant, this cause should be moot if she decides to remain with the applicant. In any case, the record does not support counsel's trepidation regarding the availability of

the applicant. In any case, the record does not support counsel's trepidation regarding the availability of suitable counseling in Morocco. Also, according to the evidence, the applicant's wife's employment was to terminate in early 2004. There is no evidence that her departure from the United States would curtail the applicant's wife's career as a nanny.

Counsel maintains that if the applicant's wife remains in the United States without the applicant, she will suffer severe psychological consequences. In support of this contention, counsel submits a letter written by [REDACTED] a licensed clinical social worker, on February 16, 2004. [REDACTED] wrote that the applicant had attended one counseling session and was scheduled for six additional sessions. [REDACTED] noted that the applicant's wife reported symptoms of depression and anxiety stemming from her concerns regarding the applicant's removal and other problems. [REDACTED] noted that the applicant's wife reported "mild suicidal ideation when alone," but there is no indication the applicant's wife was at risk of harming herself or others or that she would be incapacitated by the applicant's absence. [REDACTED] recommended that the applicant's wife undergo psychological testing and further counseling. The applicant's wife wrote that she requires medication for her depression, but there is no documentation regarding this statement. The evidence on the record establishes that the applicant's wife is suffering emotionally from the stress related to the applicant's inadmissibility, but that it does not appear to go beyond that which would normally be encountered in this situation.

Counsel also contends that the applicant's wife would be financially ruined by the applicant's departure. The record reflects that the applicant and his wife purchased a residence, and the applicant's financial declaration appears to indicate that, in order to maintain their current expenses, both the applicant and his wife must contribute to the family budget. The record does not indicate that the applicant's wife would be unable to make necessary household and financial adjustments, however, to cope with a changed situation. Moreover, 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.

Upon consideration of all the documentation on the record, the AAO concurs with the interim district director's determination that the applicant has not established that his wife would undergo extreme hardship should he be removed. 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.