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FILE:



Office: HONG KONG

Date: FEB 17 2005

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Hong Kong. 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 Pakistan. The applicant was found inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II). The record reflects that the applicant is the spouse of a U.S. citizen and father of a U.S. citizen son. He seeks a waiver of inadmissibility to immigrate to the United States, as the beneficiary of an immediate relative petition filed on her behalf by his wife.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and that the applicant “failed to demonstrate a qualifying level of rehabilitation, i.e. that you are no longer a threat to public safety if you were to immigrate to the United States.” The application was denied accordingly. 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, or

(II) a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . . 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 applicant was convicted of three crimes and, contrary to assertions of counsel, is therefore ineligible for any exception under INA § 212(a)(2)(A)(ii), which applies solely to aliens who committed only one crime. The finding of inadmissibility under this section is based on the applicant's convictions for blackmail (1993), possession of dangerous drugs (2000), and "wounding" (2003). The question on appeal is whether the applicant qualifies for a waiver. 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 subparagraphs (A)(i)(I) . . . of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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). The applicant's convictions for blackmail and wounding fall under INA § 212(a)(2)(A)(i)(I), waivable under INA § 212(h)(1). The applicant's conviction for possession of dangerous drugs relates to possession of "one hand-tolled cigarette containing 0.06 grammes of cannabis resin." *Minutes and Depositions of Witnesses* (February 18, 2000), resulting in inadmissibility under

INA § 212(a)(2)(A)(i)(II). As the applicant was found inadmissible for a single offense involving simple possession of less than 30 grams of marijuana, the inadmissibility is also waivable under INA § 212(h)(1).

The district director's decision below mentioned that the applicant had not shown adequate rehabilitation and that he is not a threat to public safety. The activities for which the applicant is inadmissible occurred less than 15 years ago and he is therefore statutorily ineligible for a waiver under INA § 212(h)(1)(A). Although it is not clear from the decision, to the extent that the decision may have been based on an analysis of the applicant's situation under INA § 212(h)(1)(A), the director's decision was erroneous.

The applicant is eligible for consideration under INA § 212(h)(1)(B), which is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the alien himself is not a permissible consideration under the statute. The sole qualifying relatives for whose benefit the waiver may be granted in this case are the applicant's U.S. citizen wife and son.

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). 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, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse and child face extreme hardship if the applicant is refused admission. The record is virtually devoid of supporting evidence of hardship. The record contains only statements of the applicant, his wife, and his cousin. The statements indicate that the applicant's spouse and child face financial and emotional hardship, and that the applicant's family ties all reside in the United States. There is no supporting evidence of the couple's finances. The applicant's wife also states that her religion does not allow her to live separate from her husband. Her religion is not specified, nor is there any supporting documentation of the particular hardship created due to her religious beliefs. She also describes an incident

taking place in Hong Kong where, due to language difficulties, the couple's son was diagnosed late with pneumonia. The record does not support a finding that the applicant's spouse and child face extreme hardship if they return to the United States for better medical care without the issue of the language barrier. In the absence of evidence to the contrary, the AAO finds that the applicant's spouse and child face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(h), 8 U.S.C. § 1186(h). Although the statement of the applicant's wife's cousin in support of the waiver application indicating that he served as a translator for the U.S. Marine Corps in Afghanistan might be relevant to the issue of whether the applicant merits a favorable exercise of discretion, in that he has been found statutorily ineligible for a waiver, we do not reach the issue of discretion.

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.