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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]

Office: LOS ANGELES DISTRICT OFFICE

Date: FEB 18 2005

IN RE:

[Redacted]

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:

[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 District Director, Los Angeles. 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 Lebanon who was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). The record reflects that the applicant is the father of a U.S. citizen son. He seeks a waiver of inadmissibility to remain in the United States and adjust status to that of a lawful permanent resident pursuant to INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immigrant petition for a skilled alien worker filed on his behalf by an import/export company.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen child and denied the application accordingly.

On appeal, counsel contends that refusal to admit the applicant will result in extreme hardship to the applicant's U.S. citizen child. 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, . . . 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 district director based the finding of inadmissibility under this section on the applicant's 1996 conviction for conspiracy and possession of forged securities in violation of 18 U.S.C. §§ 513(a) and 371. *Decision of the District Director* (September 17, 2003) at 2. The applicant does not qualify for the "single petty offense" exception in INA § 212(a)(2)(A)(ii) because he was over 18 years of age when the crime was committed in 1995 and the maximum penalty for the offenses for which he was convicted exceed imprisonment for one year. The applicant does not contest the district director's determination of inadmissibility. 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 subparagraph (A)(i)(I) . . . 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 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). A section 212(h)(1)(B) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute. The sole qualifying relative for whose benefit the waiver may be granted in this case is the applicant's U.S. citizen 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). In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 reflects that the applicant’s son ██████████ 11 years old and was born in Los Angeles, California. He has no siblings. The applicant is married to the child’s mother, who is a derivative applicant for adjustment of status. The applicant and his wife married in Beirut in 1979. They have been residing in the United States since approximately 1987. The applicant’s parents are 77 and 87 years old and reside in Beirut. The waiver application indicates that the applicant has a U.S. citizen and a lawful permanent resident brother living in the United States, however, the record does not contain evidence of their relationship or immigration status. The record also mentions that ██████████ has cousins living in the United States, although there is no supporting evidence showing their identities, relationship to the applicant, or immigration status, if any.

Counsel emphasizes ██████████ loss of future opportunities if the applicant is refused admission, which would most likely require the applicant, his wife, and ██████████ to relocate to Lebanon. ██████████ speaks only English. He is now well into elementary school. Counsel states that education is not compulsory or funded in Lebanon, so many

children do not finish school and take on jobs to supplement their families' income. If the applicant is permitted to immigrate, he will earn a salary of approximately \$36,000 per year as an import/export manager, for which his English and Arabic language skills are essential. Counsel asserts that it would be impossible for the applicant to maintain the same standard of living for his son in Lebanon, because wages are far less. Both parents would likely need to work, unlike in the United States, where the applicant's mother is home to take care of him. Counsel also raises the issue of compulsory military service in Lebanon and the likelihood that [REDACTED] would be in grave danger if he had to serve in the military due to the persistent conflict in and around Lebanon. Counsel further states that [REDACTED] could be in danger in the Middle East because he is a U.S. citizen, speaks only English, and is acculturated to American ways.

The applicant suffers from serious bouts with asthma. His health insurance coverage and access to medical care in the United States has significantly helped him manage his condition. Counsel asserts that the applicant would be at risk of dying due to the inadequacy and expense of medical care in Lebanon. A letter from his doctor, who has treated him since 1990, states:

He has had longstanding asthma which has been oral steroid dependent in the past. He has also had, on a number of occasions, a severe exacerbation of his asthma which required rigorous medical therapy to guarantee his survival. He is currently on three different medications with four different ingredients to keep his asthma under fair control. Again, with viral infections, his asthma often becomes severe to the point where he goes into a status-like reaction. I would have concerns about the competence of medical care outside the United States in terms of his specific case.

Letter of Robert W. Eitches, MD (October 21, 2003). "Status-like reaction" is not defined or explained in the record. One 1996 "moderately severe exacerbation" is described by the doctor as resulting in "very poor lung functions He required intensive therapy He is indeed a brittle asthmatic." *Extract from Court Records (June 13, 1996).* The term "brittle asthmatic" is not defined or further explained in the record. There are no medical records of any recent asthma attacks.

The AAO notes that there is no documentation of country conditions on the record to support any of counsel's claims with respect to Lebanon.

The record does not contain sufficient evidence to support a finding that the applicant's son faces extreme hardship if the applicant is refused admission. 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. Some serious issues are raised by the record with respect to the impact of country conditions and the applicant's medical condition on the hardship his son might face if he is refused admission. While CIS is not insensitive to these issues, the AAO finds that the applicant has failed to submit sufficient evidence to support his contentions. 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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). As stated above, the applicant has the burden to prove his factual assertions with respect to the circumstances he contends will cause his son hardship, and the burden of persuasion that the facts and circumstances will lead to extreme hardship as contemplated by statute and case law. Here, the applicant has not met that burden.

The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying relative as required under INA § 212(h), 8 U.S.C. § 1186(h). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.