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FEB 22 2005

FILE:

Office: CHICAGO, IL

Date:

IN RE:

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:

[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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Kuwait and citizen of Jordan who was found to be inadmissible to the United States under 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 a crime involving moral turpitude. The applicant is the spouse of a naturalized United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and child.

The interim district director concluded that the applicant had 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 on Application for Waiver of Grounds of Inadmissibility*, dated April 23, 2003.

On appeal, counsel contends that the applicant's spouse and child will suffer greatly if the applicant is denied a waiver of his inadmissibility. *Form I-290B*, dated May 13, 2003.

In support of these assertions, counsel submits a brief; a copy of a letter from the Acting District Director, Chicago, Illinois, dated May 17, 1996 and a copy of a Form I-192 filed by the petitioner. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on September 8, 1992, the applicant was convicted of Arson in the Circuit Court for Cook County, Illinois. The applicant received a sentence of two years of probation.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 AAO acknowledges counsel's assertion that the interim district director failed to establish that arson is a crime involving moral turpitude. *Petitioner's Brief in Support of Appeal*, dated June 11, 2003. The AAO

notes that the interim district director's Decision on Application for Adjustment for Permanent Residence cites to precedent establishing that arson has been found to be a crime involving moral turpitude. *See Decision*, dated April 23, 2003. The AAO notes that counsel does not provide the statute under which the applicant was convicted and the record fails to contain documentary evidence in support of counsel's assertion that the applicant's crime is not a crime involving moral turpitude. The assertions of counsel standing alone do not form the basis for such a finding. Therefore, the AAO finds counsel's contention unpersuasive.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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 contends that the applicant was successful in obtaining a waiver pursuant to section 212(d)(3) of the Act in connection with an H-1B petition filed on the applicant's behalf and approved in 1996. *Petitioner's Brief in Support of Appeal* at 9. Counsel states that the applicant "has proven worthy of the same waiver again." *Id.* The AAO notes that a waiver pursuant to section 212(d)(3) of the Act differs substantively from a waiver pursuant to section 212(h) of the Act. A waiver pursuant to section 212(d)(3) is, by definition, reserved for aliens seeking to be admitted into the United States temporarily as a nonimmigrant. 8 U.S.C. § 1182(d)(3)(B). As indicated in the letter from the acting district director granting the applicant such a waiver, Section 212(d)(3)(B) merely requires that the applicant be in possession of appropriate documents. *See Letter from the Acting District Director*, dated June 3, 1996. By contrast, a waiver of inadmissibility pursuant to section 212(h) of the Act is limited, by definition, to intending immigrants and establishes "extreme hardship" as the relevant measure. The AAO finds that qualification for a waiver pursuant to section 212(d)(3) of the Act, standing alone, does not render an alien qualified for a waiver pursuant to section 212(h) of the Act. The two provisions are not mutually inclusive. Counsel's assertion that the two provisions are "the same waiver" is unpersuasive.

The AAO acknowledges counsel's assertion that the hardship faced by other relatives must be considered in determining the hardship the applicant would face if deported. *Petitioner's Brief in Support of Appeal* at 5. Counsel cites *INS v. Hector*, 479 U.S. 85 (1986) to support this assertion. The AAO notes that *Hector* is a suspension of deportation case and on that ground alone is distinguishable from the instant application. Further, the Court's holding in *Hector* fails to support counsel's contention. The opinion states:

Because we find the plain language of the statute so compelling, we ... hold that the Board [of Immigration Appeals] is not required under § 244(a)(1) to consider the hardship to a third party other than a spouse, parent, or child, as defined by the Act. Congress has specifically identified the relatives whose hardship is to be considered, and then set forth unusually detailed and unyielding provisions defining each class of included relatives.

Id. at 88. Counsel's assertion that the interim district director erred in failing to weigh the hardship of other relatives is therefore unpersuasive.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of the denial of the applicant's waiver of his grounds of inadmissibility. Counsel asserts that although the applicant's spouse emigrated to the United States from Mexico, relocation to Jordan would be extremely difficult for her as she does not know the Arabic language; she is unfamiliar with Middle Eastern culture and she, as a Western woman, would face social isolation in the applicant's home country. *Petitioner's Brief in Support of Appeal*, dated June 11, 2003. Counsel further indicates that the applicant's wife has extensive family ties in the United States. *Id.* at 6. Counsel states that the applicant's daughter will be forced to grow up without her mother's close family ties if the family relocates to Jordan. *Id.* at 8. Further, the applicant's spouse asserts that the couple's daughter would not have the opportunity to obtain a good education in Jordan. *Sworn Affidavit in Support of INS Form I-601*, undated.

The AAO finds merit in counsel's assertion that the district director failed to give adequate consideration to the hardship suffered by the applicant's daughter. *Petitioner's Brief in Support of Appeal* at 7. The decision of the director states, "The waiver authorized under 212(h) of the INA only applies to the spouse and parents of the alien, and does not allow the Service to consider your children." *Decision on Application for Waiver of Grounds of Inadmissibility*, dated April 23, 2003. The AAO finds that section 212(h)(1)(B) expressly includes consideration of hardship "to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien." The interim district director, therefore, erred in failing to consider the applicant's claims of hardship suffered by his child.

Counsel fails to establish that the applicant's spouse and child will suffer extreme hardship if they remain in the United States maintaining proximity to family members, close ties to the adopted culture of the applicant's spouse and access to educational opportunities for the couple's daughter. The applicant's spouse states that she is unemployed and that she and her daughter are dependent on the applicant for financial support. *Sworn Affidavit in Support of INS Form I-601*. The record fails to establish that the applicant's spouse is unable to obtain employment in order to contribute to her financial well-being and that of the couple's daughter. Further, the record fails to demonstrate that the applicant will be unable to financially support his family from a location outside of the United States. The applicant's spouse indicates that the applicant will be unable to find a job in Jordan because the country experiences over 50% unemployment. *Id.* The AAO notes that generalized assertions regarding country conditions in the applicant's home country do not form the basis for a finding of extreme hardship. 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.

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. The AAO recognizes that the applicant's spouse and child will likely endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and child 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.