



U.S. Citizenship
and Immigration
Services



H2

FILE:



Office: LONDON, ENGLAND

Date: JUL 25 2009

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:

SELF-REPRESENTED

INSTRUCTIONS:

PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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, London, England and 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 England who was found to be inadmissible to the United States pursuant to 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 crimes involving moral turpitude (four convictions of obtaining property by deception). The record indicates that the applicant has a U.S. citizen spouse. The applicant seeks a waiver of inadmissibility in order to reside with her family in the United States.

The officer in charge found that based on the evidence in the record, the applicant likely met the threshold of extreme hardship, but did not merit a favorable exercise of discretion. *Officer in Charge Decision*, dated May 9, 2005.

On appeal, the applicant and her spouse assert that the applicant should be granted a waiver due to financial hardship and the effect on the applicant's military schedule. *Letter in Support of Appeal*, dated May 23, 2005.

The record contains affidavits from the applicant and her spouse in addition to previously submitted affidavits. 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 AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 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 this case is appropriate in regard to the applicant's spouse. The AAO notes that it can only base its decision on the record before it. The applicant is required to show that denial of her admission to the United States will result in extreme hardship to her spouse in the event that he relocates to England or if he remains in the United States without her. The record indicates that the parents of the applicant's spouse were born in the United States and currently reside there. *Form G-325, Biographic Information*, dated January 6, 2004. There is no other indication of lawful permanent resident or United States citizen family ties to the United States for the applicant's spouse. The AAO notes that submission of documents verifying family ties to lawful permanent residents or United States citizens, such as copies of birth certificates, U.S. passports or green cards, are generally required to address this issue, but were not received with the appeal. The record does not mention any family ties, if applicable, outside of the United States for the applicant's spouse. There is no evidence of the country conditions in England and how that would affect the applicant's spouse.

The applicant's spouse states several financial problems related to the current situation. These include paying for two households (one of which is a \$48.00 per night hotel in England) and, based on a recent budget, spending \$2,000 per month more than his gross income due to the current situation. *Letter from Applicant's Spouse*, undated. However, no financial documentation, such as hotel receipts or the referenced budget, is provided to substantiate these assertions. The AAO requires these types of documents to verify the financial hardship on the applicant's spouse. The applicant states that she ran two thriving businesses and was recognized as the small businesswoman of the year in the Norfolk region. *Applicant's Affidavit*, dated May 23, 2005. The applicant's spouse states that his wife was a very successful business woman. *Affidavit of Applicant's Spouse*, dated May 23, 2005. Therefore, the applicant appears capable of making financial contributions to the family in the event that she is denied admission to the United States. No reasons why the applicant could not work have been submitted.

The applicant's spouse also asserts that he will be forced to sell the house in Florida and apply for a humanitarian change of stations from Florida to England. *Id.* This statement reflects that the applicant's spouse will be able to relocate and work in England upon approval of his humanitarian application. No evidence has been provided to establish the feasibility of approval of a change of station.

The applicant's spouse contends that the visa denial has caused a major impact on his ability to perform an important mission in Iraq and in Tyndall, Florida. *Letter in Support of Appeal*. The AAO notes that the applicant's spouse made a difficult, personal career decision in leaving Iraq. However, he is still working with the Air Force and moreover, the record does not reflect any reduction on salary from providing services in Florida rather than Iraq.

The applicant's spouse states that his father has cancer and that he needs to be close to him. *Letter from Applicant's Spouse*. The AAO is sympathetic to the applicant's spouse, however, no documentation is submitted to verify the father's condition, the current status of the condition and its effect on the applicant's spouse in the event he relocates to England. This type of documentation would be relevant in showing hardship to the applicant's spouse in the event he relocates to England. The AAO recognizes that the applicant's spouse was pulled from a mission in Iraq in order to address the applicant's visa problems, however, there is no evidence that this has caused any health conditions relevant to extreme hardship analysis.

Extreme hardship has not been shown in the event that the applicant's spouse relocates to England or in the event that he remains in the United States.

U.S. court decisions have additionally 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 U.S. Supreme Court additionally 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer hardship that is unusual or beyond that which would normally be expected upon removal. 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. The AAO notes, however, that in the event extreme hardship were to be found, the applicant would still need to establish that the positive factors outweigh the significant negative factors, her recent convictions.

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.