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

PUBLIC COPY

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[Redacted]

FILE: [Redacted]

Office: LOS ANGELES, CALIFORNIA

Date: MAR 23 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 District Director, Los Angeles, California. 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 Vietnam who entered the United States as a parolee on February 4, 1992. The applicant is married to a naturalized U.S. citizen and 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. The applicant seeks a waiver of inadmissibility in order to reside with his wife in the United States.

The district director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. On appeal, counsel asserts that both the applicant's U.S. citizen wife and his lawful permanent resident (LPR) mother would suffer extreme hardship on account of his inadmissibility, whether they choose to remain in the United States or return to Vietnam to stay with the applicant.

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 theft with a prior theft conviction, in violation of California Penal Code § 666-484(a)-488, on November 12, 1998, which is less than 15 years prior to the adjudication of his adjustment of status application. 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 (LPR) 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.

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.

Counsel asserts that the applicant's wife, who left Vietnam for the United States in 1993, would have difficulty reassimilating into the Vietnamese lifestyle and finding a job in that country. The record does not contain information regarding the applicant's wife's employment prospects in Vietnam. Counsel notes that the applicant's wife's entire family now lives in the United States. Counsel also contends that her already weak health would suffer in Vietnam, because the standard of health care there is lower than in the United States. A letter from [REDACTED] M.D. dated September 30, 2003 indicates that the applicant's wife is under treatment for hyperprolactinemia, headaches, insomnia, depression, and infertility. However, the record contains no documentation that Vietnam lacks sufficient medical resources to treat the applicant's wife's problems. The applicant's wife writes in her statement on appeal that she fears she might experience problems in Vietnam due to her U.S. citizenship and the fact that her father was in a reeducation camp for 11 years. There is no documentation on the record in support of this contention, however. The record does not establish that the applicant's wife would experience extreme hardship if she relocates to Vietnam.

Counsel also contends that the applicant's wife would experience extreme hardship if she remains in the United States without the applicant. In his letter, Dr. [REDACTED] expresses the opinion that the applicant's wife's "condition would worsen without her husband." His letter, however, does not mention how long the

applicant's wife has experienced health problems, nor does it indicate that she would be incapacitated in the absence of the applicant. Counsel also indicates that the applicant's wife and mother would suffer severe financial hardship if the applicant is removed, since the applicant's wife's salary is very low, his mother does not work, and the applicant's job prospects in Vietnam are weak. The applicant is a mechanical engineer, however, and there is no documentation on the record that he would not be able to find employment in Vietnam. Moreover, the record reflects that the applicant has two brothers and seven sisters living in the United States (and one sister in Canada). The evidence does not show that these close relatives would be unable to assist his wife and mother financially, or that the applicant himself would be unable to contribute to his family's finances while he is living in Vietnam.

Counsel states that the applicant's LPR mother, who is 75 years old, would suffer extreme hardship if she returns to Vietnam to remain with the applicant. Counsel discusses the applicant's mother's nonexistent employment prospects in Vietnam and her health problems. Given that the applicant's mother does not work now but is supported by her family, there is no explanation as to why she would be expected to work in Vietnam. Michael Dow, M.D. writes in a letter dated September 30, 2003 that the applicant's mother suffers from diabetes, high blood pressure, chronic cough, osteoporosis, psoriasis, arthritis, obstructive pulmonary disease, fatty liver, and bicep tendinitis. Dr. [REDACTED] states that the applicant's mother requires regular medical monitoring and several medications. While the applicant's mother's physical condition is not necessarily unusual for an individual in her age group, the AAO recognizes that returning to Vietnam at this stage in her life might cause the applicant's mother greater than ordinary hardship.

Nevertheless, the record does not support the claim that the applicant's mother would suffer extreme hardship if she remains in the United States with access to her current health care resources and the assistance and support of her numerous children. While the applicant and his mother both state that he is her primary caregiver, the record does not indicate that her other nine children living in the United States are unable to aid her.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse and LPR mother would suffer hardship that was 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.

In proceedings for application for waiver of grounds of inadmissibility under § 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.