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FILE:



Office: FRANKFURT

Date: NOV 09 2005

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:

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, Frankfurt. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Germany 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. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to enter the United States and reside with her U.S. citizen husband and son.

The district director concluded that the applicant 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 of the Officer in Charge*, dated April 21, 2004.

On appeal, the applicant's husband contends that he and the applicant's son will suffer hardship if the applicant is prohibited from entering the United States. *Statement from Applicant's Husband in Support of Appeal*, received May 14, 2004.

The record contains a statement from the applicant's husband in support of the appeal; a statement from the applicant's husband in support of the initial Form I-601, Application for Waiver of Ground of Excludability; a copy of the applicant's husband's U.S. passport; a copy of the applicant's marriage certificate, and; copies of documentation regarding the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

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

- (A)(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 [now the Secretary of Homeland Security (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 record reflects that the applicant has been convicted of crimes involving moral turpitude. Specifically, on November 9, 2000, the applicant was convicted of "Breach of fiduciary duty (embezzlement) in 33 cases" in the Tiergarten Local Court, Berlin, Germany. The applicant illegally procured the equivalent of approximately \$75,000. The applicant received a sentence of nine months incarceration, suspended pursuant to two years probation. Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest her inadmissibility on appeal.

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. Section 212(h)(1)(B) of the Act. Hardship the applicant herself experiences upon being found inadmissible is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen husband and son. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) 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 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.

On appeal, the applicant's husband states that his family is experiencing hardship due to the applicant's inadmissibility. *Statement from Applicant's Husband in Support of Appeal.* He provides that his family is currently separated, as he is in the United States while his and the applicant's U.S. citizen son is currently residing in Germany with the applicant. *Id.* The applicant's husband indicated that he was born in the United States, and he spent his entire life here. *Statement from Applicant's Husband in Support of Form I-601.* He stated that he sold his family business and traveled to Germany, where he met the applicant. *Id.* at 1. He explained that he resided in Germany throughout the term of the applicant's pregnancy with their child, yet he was unemployed there and his financial resources are dwindling. *Id.* at 2. The applicant's husband stated that it is very difficult for him to secure employment in Berlin, and he doesn't anticipate being able to provide for his family in Germany. *Id.* at 2-3. He provided that his family's economic situation is further strained by the fact that the applicant has a thyroid condition that requires monthly medication. *Id.* at 2. He further indicated that he and the applicant wish for their son receive education in an English-speaking United States school. *Id.* at 3.

Upon review, the applicant has not established that her husband or son will suffer extreme hardship as a result of her inadmissibility. The applicant's husband expresses that he is experiencing emotional hardship due to separation from the applicant and his son. However, while the AAO acknowledges that such separation is difficult, the applicant has not established that this consequence goes beyond that which is commonly experienced by the families of aliens deemed inadmissible. U.S. court decisions have 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.

Further, the record reflects that the applicant’s husband, and presumably the applicant’s son, have citizenship in Germany. Thus, they may remain there with the applicant indefinitely. As the applicant’s husband has resided in Berlin for a significant period of time, at least the duration of the applicant’s pregnancy, it is evident that he can adjust to life in Germany.

The applicant’s husband explained that he is experiencing economic hardship, as his financial resources are limited. However, the applicant has not shown that her husband is unable to meet his financial needs in the applicant’s absence, should he remain in the United States. In fact, the applicant’s husband indicated that he and the applicant have been subsisting on his resources alone, thus he has not relied on her for economic contribution. While the applicant’s husband stated that it is difficult for him to find employment in Germany, in part due to his limited language ability, the applicant has submitted no evidence to show that her husband has unsuccessfully attempted to secure work. As a German citizen, it is presumed that he is authorized for employment there and free to seek a position. The applicant’s husband indicated that he and the applicant have a business opportunity in the United States, yet the record lacks sufficient information about this opportunity, and it has not been shown that the applicant’s husband cannot avail himself of this opportunity without the applicant. Accordingly, the applicant has not established that her husband will suffer economic difficulty that amounts to extreme hardship. Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The applicant’s husband stated that he and the applicant wish for their U.S. citizen son¹ to reside in the United States and attend U.S. schools. As a U.S. citizen, the applicant’s son is not required to reside outside the United States as a result of the applicant’s inadmissibility. As the applicant’s U.S. citizen husband is in the United States, their son would have a parent to care for him. Further, should the applicant’s son remain in Germany, attending school there as opposed to the United States is not deemed extreme hardship.

Based on the foregoing, the instances of hardship that will be experienced by the applicant’s husband or son should the applicant be prohibited from entering the United States, considered in aggregate, do not rise to the

¹ It is noted that the applicant’s Form I-601, Application for Waiver of Ground of Excludability, lacks accompanying evidence of the birth of her child, such as a birth certificate that confirms that her husband is the father. This evidence is important, as it would show whether the applicant’s son is a U.S. citizen or lawful permanent resident, such that his hardship could be properly considered in adjudicating the applicant’s waiver application. See Section 212(h)(1)(B) of the Act.

level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.