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**U.S. Citizenship
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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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), Ho Chi Minh City, Vietnam, denied the application for waiver. 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 Vietnam who is the beneficiary of an immigrant petition filed by his naturalized U.S. citizen father. He was found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted in Vietnam of a crime involving moral turpitude (CIMT). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen father.

The OIC concluded that the applicant failed to establish that his inadmissibility would cause extreme hardship to his U.S. citizen father, the only qualifying relative, and denied his application for waiver accordingly. On appeal, the applicant asserts that he did not commit a CIMT and that his inadmissibility would result in extreme hardship to his U.S. citizen father.

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

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (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 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].
 - (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 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 6 months (regardless of the extent to which the sentence was ultimately executed).

The record indicates that the applicant was convicted of “defrauding properties” and sentenced to 27 months imprisonment by the People’s Court of Tien Giang Province, Vietnam. He served 23 months with the time served reduced by four months for good behavior. It is clear that the applicant committed a CIMT. Crimes in which fraud is an ingredient have always been regarded as involving moral turpitude. *See, e.g., Gonzalez-Alvarado v. INS*, 39 F.3d 245, 246 (9th Cir.1994) (“Typically, crimes of moral turpitude involve fraud.”); *Burr v. INS*, 350 F.2d. 87, 91 (9th Cir. 1965), *cert. denied*, 383 U.S. 915 (1966). The applicant contends that the crime he committed is not a CIMT because it is not designated a CIMT in Vietnam’s criminal code, because he was a driver and not the person who committed the offense, and because his term of imprisonment was reduced. These arguments are unconvincing. There is no requirement in the Act that a foreign government or court designate an offense as one that involves moral turpitude. The issue is whether the foreign conviction meets certain criteria laid out by the courts and the Board of Immigration Appeals (BIA) when interpreting the meaning of “crime involving moral turpitude” as used in the Act. The BIA, in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992); describes some of the components of a CIMT:

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

The record indicates that the crime for which the applicant was convicted, “defrauding properties,” required knowledge of the scheme being carried out. The applicant was a knowing participant in a scheme to take money by convincing individuals that fake gold and diamond jewelry was authentic. The statute expressly includes those convicted of attempting or conspiring to commit a CIMT in addition to those who actually carry out the offense. *See* section 212(a)(2)(A)(i)(1). The reduction in sentence does not change the fact that the applicant was convicted of “defrauding properties.” As the applicant states in the brief submitted in support of his appeal, “I was punished for the offense of deception because I committed the act of helping another indictee to commit the offense of deception.” *Applicant’s Brief*, Page 2. The applicant was convicted of a CIMT in Vietnam and as a result is inadmissible.

The OIC also concluded that the applicant was convicted of an aggravated felony. Whether the crime is an aggravated felony would only be relevant if the applicant had been admitted to the United States as a lawful permanent resident and faced the possibility of deportation, which is not the case here. *See* section 212(h)(2) of the Act, 8 U.S.C. § 1182(h)(2). Therefore, the AAO does

not address whether the crime that the applicant was convicted of constitutes an aggravated felony.

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

- (h) The Attorney General [now, Secretary, Homeland Security] 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 [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 applicant is seeking a waiver of inadmissibility due to the hardship that inadmissibility would cause to his father.

The applicant's father was detained in re-education camp on April 30, 1975. At the time the applicant was eleven years old. According to the applicant's brief, his father did not have the opportunity to educate and care for him after being sent to the re-education camp. *Applicant's Brief*, Page 3. If the applicant's inadmissibility is not waived, his father, who is aged 79, will not have the opportunity to make up for the fact that he could not provide for the applicant when he was a child.

U.S. court decisions have held that the common results of inadmissibility 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 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau 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.

No evidence has been provided concerning current conditions in Vietnam as they affect the applicant's father. Although the applicant's father left the country as a refugee, there is no

information concerning whether he has ever returned to Vietnam or how he fared when he did return. No information has been presented to indicate whether the applicant's father retains ties to Vietnam in addition to his son. Therefore, the applicant has not established that his father would face extreme hardship if he returned to Vietnam to be with the applicant.

The evidence is also insufficient to conclude that any hardship that his father will experience as a result of the applicant being unable to join him in the United States is "extreme." Hardship to the applicant is not relevant to the waiver determination. The harm caused by the separation of a son from his father is significant but it does not amount to extreme hardship. There is no evidence that the applicant's father needs the applicant to provide financial, physical or emotional support to carry out his daily activities or to live his life. There is no evidence in the record to indicate that the applicant's father requires his son's care. It is also noted that the applicant's brother, who indicated that he would sponsor the applicant, lives in Bowling Green, Kentucky, the same town as his father.

The AAO recognizes that the applicant's father will suffer some type of hardship on account of the applicant's inadmissibility, but the record does not establish that his situation will be extreme when compared to that of similarly situated persons. The AAO therefore finds that the applicant failed to establish extreme hardship to his father as required under INA § 212(h)(1)(B), 8 U.S.C. § 1182(h)(1)(B). 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 both section 212(h)(1)(B) and section 212(i) of the Act the burden of proving eligibility rests with the applicant. § 291 of the Act, 8 U.S.C. § 361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.