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**U.S. Citizenship
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FILE:



Office: FRANKFURT, GERMANY

Date: **NOV 14 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), Frankfurt, Germany 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 the Germany who is the beneficiary of an immigrant petition filed by her U.S. citizen son. She 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 Germany 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 her U.S. citizen son.

The OIC concluded that the applicant failed to establish that her inadmissibility would cause extreme hardship to her U.S. citizen son, the only qualifying relative, and denied her application for waiver accordingly. On appeal, the applicant asserts that she now has a clean criminal record, that her son would not leave Germany without her, and that she and her son would be able to work in the United States.

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 two counts of fraud in the Nürtingen Germany local court on May 24, 2000 and that the crime for which she was convicted had a maximum sentence of five years imprisonment. 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). It is not clear to what document the applicant referred when she indicated on the Form I-290B *Notice of Appeal to the Administrative Appeals Unit (AAU)* that she no longer has a criminal record and referenced a police certificate dated February 23, 2004. The record includes an untranslated German language document dated February 23, 2004. The AAO is unable to consider foreign language documents that have not been translated. However, even assuming that the document indicates that the applicant has somehow been rehabilitated, the conviction is still a conviction for immigration purposes. In *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999), the Board of Immigration Appeals held that under the statutory definition of the term "conviction", no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Once an alien is subject to a "conviction" as that term is defined in section 101(a)(48)(A) of the Act, the alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt through a rehabilitative procedure. Therefore, the record indicates that the applicant was convicted of a CIMT in Germany and as a result is inadmissible.

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 –
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 - (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 concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I & N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

The record indicates that the applicant's son was born and raised in Germany, deriving his U.S. citizenship through his father. *Decision of the OIC*, February 12, 2004, P.3. The record also indicates that both the

applicant and her son have been offered employment in the United States and the applicant's son is not employed in Germany. See Form I-290B, *Notice of Appeal to the Administrative Appeals Unit (AAU) and Letter of Benjamin Schwarz*. The applicant's son indicated that he will not live in the United States if his mother cannot join him. U.S. court decisions have repeatedly 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).

The evidence is insufficient to conclude that the harm caused to the applicant's son by his mother's inadmissibility would constitute extreme hardship. He has the option of either remaining in Germany, the country where he was born and raised, or moving to the United States. Both countries are among the wealthiest in the world. There are frequent and easy travel options between the two countries. It is possible that there are more employment opportunities in the United States than in Germany for the applicant's son but there is nothing in the record to indicate that the applicant's son has any sort of disability or that he would be unable to find work or to support himself in Germany. The AAO therefore finds that the applicant failed to establish extreme hardship to her son as required under INA § 212(h)(1)(B), 8 U.S.C. § 1182(h)(1)(B).

It is noted that the record indicates that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an "alien who, by fraud or willfully representing a material fact, seeks to procure...admission into the United States...." After having been informed by the U.S. consulate on July 3, 2003 that her visa application was denied because she was inadmissible due to the CIMT (fraud) convictions, she attempted to gain admission under the Visa Waiver Program on July 8, 2003. On Form I-94, she indicated that she had never been convicted of a CIMT. See *Decision of the OIC*, Page 2. To gain admission to the United States, aliens who are inadmissible under section 212(a)(6)(C)(i) of the Act must acquire a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). Section 212(i) waivers require a showing of extreme hardship to a U.S. citizen spouse or parent. Since the applicant does not have a qualifying relative, she is not eligible for a section 212(i) waiver of inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's son caused by the applicant's inadmissibility to the United States. There also is no information in the record to indicate that the applicant has the required qualifying relative to obtain a section 212(i) waiver. 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 both section 212(h)(1)(B) and section 212(i) of the Act the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.