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FILE: [REDACTED] Office: BANGKOK (HO CHI MINH CITY)

Date: APR 25 2006

IN RE: [REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Country Attaché, Ho Chi Minh City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Viet Nam 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 a crime 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 son and permanent resident husband.

The country attaché 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 Country Attaché*, dated August 23, 2004.

On appeal, the applicant contends that her U.S. citizen son and permanent resident husband will suffer extreme hardship if she is prohibited from entering the United States. *Statement from Applicant in Support of Appeal*.

The record contains statements from the applicant in support of the appeal and the Form I-601 application; statements from the applicant's son and husband in support of the Form I-601 application; a statement from the applicant's son on Form I-290B; documentation regarding the applicant's criminal conviction in Viet Nam; documentation of the ownership of the applicant's home in Viet Nam; letters verifying the applicant's son's employment in the United States; a copy of the applicant's son's naturalization certificate, and; a copy of the applicant's son's birth certificate. 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) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
 - (i) . . . the 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
- (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 in Viet Nam of a crime involving moral turpitude (an attack with a knife leading to a conviction for the offense of “Injured Deliberately.”) Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. While the applicant’s son expresses the opinion that the applicant was unfairly convicted, the applicant has provided no explanation of the events that led to her conviction, and no indication that the criminal court proceedings were unfair. The applicant submits documentation to reflect that a request for a reduction or expungement of her sentence was made on her behalf. However, the applicant has not shown that a court reevaluated her sentence or her culpability for the offense of “Injured Deliberately.” Thus, the applicant has not shown that she was erroneously deemed inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The AAO notes that section 212(h)(1)(B) 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. Hardship the applicant herself experiences due to her inadmissibility 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 son and permanent resident husband. *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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

On appeal, the applicant contends that her U.S. citizen son and permanent resident husband will suffer extreme hardship if she is prohibited from entering the United States. *Statement from Applicant in Support of Appeal*. The applicant's son provides that he came to the United States when he was 15-years-old, and he has been in the country for almost 20 years. *Statement from Applicant's Son on Form I-290B; Applicant's Son's Statement in Support of Form I-601 Application*. The applicant's son states that when his father (the applicant's husband) arrived in the United States in November 2001, his father loaned him approximately \$26,000 which constituted his father's life savings. *Statement from Applicant's Son on Form I-290B*. The applicant's son indicated that he spent the money on a van and other materials for his business, as well as to improve his living conditions. *Id.* The applicant's son states that if the applicant is prohibited from entering the United States, he must return the funds he borrowed from his father, which he is presently unable to do. *Id.*

The applicant's son further indicates that he will suffer emotional hardship if the applicant is prohibited from entering the United States, as he will experience shame due to his inability to help his parents immigrate. *Statement from Applicant's Son on Form I-290B*. The applicant stated that her husband is experiencing emotional distress as a result of being separated from her, and that her husband's difficulty is having a negative impact on her son. *Applicant's Statement in Support of Form I-601 Application*. Due to his father's emotional distress, the applicant's son provided that he has spent money intended for his children's education on flying his father back to Viet Nam for visits with the applicant. *Applicant's Son's Statement in Support of Form I-601 Application*. The applicant's son stated that he must contribute to the applicant's financial support in Viet Nam, implying that he would have less of a financial burden if she resides with him in the United States. *Id.* He stated that, if the applicant is permitted to immigrate to the United States, she can assist him with care of his two children, and his father's emotional difficulty will subside. *Id.*

The applicant's husband stated that it is almost impossible for him to return to Viet Nam, as he no longer has a house or job there. *Statement from Applicant's Husband in Support of Form I-601 Application*. The record contains documentation that the applicant transferred ownership of her house to her youngest daughter. The applicant explains that, as a result, she has had to reside with her three daughters in Viet Nam intermittently so as not to become a burden to any one of them. *Applicant's Statement in Support of Form I-601 Application*.

Upon review, it is first noted that the applicant has not provided documentation to show that she is married, such as a copy of her official marriage certificate. Nor has the applicant provided documentation to show that her husband is a permanent resident in the United States, such as a copy of his passport with a Form I-551 stamp or permanent resident card. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the applicant has not established that hardship to her husband constitutes hardship to a qualifying relative. *See* section 212(h)(1)(B) of the Act.

The applicant has failed to show that her son or husband will experience extreme hardship should she be prohibited from entering the United States. The applicant expresses that her husband is suffering emotionally in her absence. The applicant's husband relocated to the United States in November 2001 to reside with the

applicant's son, though he has returned to Viet Nam on two noted occasions to visit the applicant. The applicant's husband states that it is almost impossible for him to return to Viet Nam to join the applicant, as he no longer has a house or job. Yet, the record reflects that the applicant's and her husband's home is still in legal possession of her youngest daughter. The applicant has not shown that they could not reside there again. As the applicant and her husband have three daughters in Viet Nam, with whom the applicant resides, the record suggests that the applicant's husband could also reside with his daughters as necessary in order to rejoin the applicant. As the applicant's husband is ostensibly a native and citizen of Viet Nam who only recently immigrated to the United States, it is evident that he would not face the challenges of adapting to an unfamiliar language and culture should he return there. Yet, as a permanent resident of the United States, the applicant's husband is not required to reside outside the United States as a result of the applicant's inadmissibility.

The applicant's son indicates that he wishes to be reunited with his mother after approximately 20 years, and that they have maintained a close relationship. Yet, the record shows that the applicant's son chose to live apart from the applicant for most of his life in order to avail himself of the benefits of residence in the United States. Thus, continued separation of the applicant and her son does not constitute a change in their circumstances that rises to the level of extreme hardship. The applicant expresses that her husband's emotional difficulties are having a negative impact on her son, yet the applicant has not shown that such consequences go beyond those normally expected when a family member is found inadmissible.

The AAO acknowledges that family separation is emotionally difficult. However, the applicant has not established that her son or husband will suffer consequences that go beyond those expected of family members of those 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. Should the applicant remain separated from her son or husband, she has not shown that the emotional consequences of such separation constitute extreme hardship as contemplated by section 212(h)(1)(B) of the Act.

The applicant's son indicates that he will experience economic hardship if the applicant is prohibited from entering the United States, as he is compelled to provide financial support for her abroad, and he has used his savings to fund his father's trips to Viet Nam. However, the applicant has not submitted evidence of her son's expenses, the amount of economic support he provides for her in Viet Nam, or the amount of resources he committed to sending his father back to Viet Nam. Thus, the AAO lacks sufficient documentation to assess the actual financial impact the applicant's absence has on her son. Further, as the applicant's son expresses that he intends for the applicant to reside with him in the United States, it is understood that he would still be required to provide financial support for her in the United States. The applicant has not shown

that her inadmissibility will cause her son to endure economic consequences that rise to the level of extreme hardship.

Based on the foregoing, the applicant has not shown that, should she be prohibited from entering the United States, her son or husband will suffer hardship that is unusual or beyond that which would normally be expected upon inadmissibility. Thus, the applicant has not shown that the instances of hardship to her husband or son, considered in aggregate, rise to the 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.