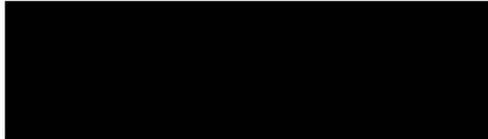


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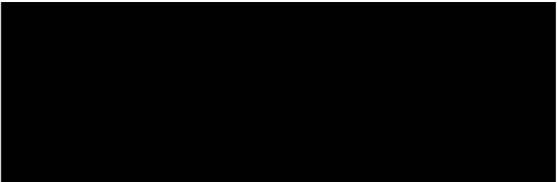


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FILE: A74 420 421 Office: LOS ANGELES Date: **DEC 15 2006**

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:  


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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uzbekistan 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 is the spouse of a naturalized U.S. citizen and the mother of U.S. citizen children. She 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 spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 27, 2005.

The record reflects that, on August 4, 1997, the applicant was convicted of shoplifting in violation of section 490.5 of the California Penal Code (CPC). The applicant was sentenced to 24 months probation and one day in jail. On September 22, 1998, the applicant was convicted of theft of property from a person in violation of section 484(a) of the CPC. The applicant was sentenced to 24 months of probation and one day in jail. On September 8, 2000, the applicant was convicted of grand theft of property greater than \$400 in violation of section 487(a) of the CPC. The applicant was sentenced to 24 months of probation and one day in jail.

On October 18, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant's spouse and children would suffer extreme hardship if the applicant is denied a waiver. *See Applicant's Brief* dated February 25, 2005. In support of the appeal, counsel submitted the above-referenced brief, psychological documentation for the applicant, her spouse and children, an affidavit from the applicant's spouse, medical information and country conditions reports. The entire record was reviewed and considered in rendering a decision in this case.

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

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if-

- (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 [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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and convictions for shoplifting, theft of property and grand theft, crimes involving moral turpitude. Counsel does not contest the district director's finding of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

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. [REDACTED] 22 I&N Dec. 560 at 565 (BIA 1999). [REDACTED] 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. 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 BIA has held:

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).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See* [REDACTED] 21 I&N Dec. 296 (BIA 1996).

The record reflects that, on September 28, 1995, the applicant married her spouse, [REDACTED] [REDACTED] is a native of Latvia who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 1998. The applicant and [REDACTED] have a ten-year old son and a nine-year old son who are both U.S. citizens by birth. The record reflects further that the applicant is in her 40's, [REDACTED] is in his 30's, and [REDACTED] and the applicant's children may have some health concerns.

Counsel contends that [REDACTED] will suffer extreme hardship if he were to remain in the United States without the applicant because he was recently laid off and depends on the applicant's income, he would have

to support two households because the applicant would be unable to provide for herself in Uzbekistan, he would have to sell their house because he could not meet the mortgage payments, the applicant not only assists him in raising their two children but also with his parents and grandparents who require their assistance due to their medical problems, his parents and grandparents' health could be compromised by the departure of the applicant due to emotional stress, his medical condition is exacerbated by the thought of separation from the applicant and he is suffering from acute stress disorder which would also be exacerbated by his wife's departure. Counsel contends that the applicant's children will suffer extreme hardship if they were to remain in the United States without the applicant because they would be uprooted because

would have to sell the house, they would be placed in daycare or with a nanny, they would be separated from their mother, they are at risk of developing the same medical condition as and the youngest son suffers from nocturnal enuresis and speech delays which would be exacerbated by the loss of his mother. in his affidavits, states that the denial of the applicant's waiver would negatively affect his parents and grandparents' health conditions, he suffers from psoriasis and arthritis which have been exacerbated by the stress he suffers due to the denial of the applicant's waiver, he is terrified and depressed since the denial of the waiver, the applicant assists him in caring for his parents and grandparents and it would cause him financial hardship to be without her income since his employment is currently unstable and insufficient to cover the family's debts. also states that it is inhumane and heartless to separate the applicant from their children and they would will be irreparably harmed from the trauma for the rest of their lives, his youngest son was only able to overcome his speech delays with the assistance of the applicant and any stress situations may trigger further developmental problems, the applicant's presence is crucial for the children's development and wellbeing, without the applicant's income he would have to sell the house which would uproot the children from their current school and without the applicant's income he would have to cut all the expenses for his children's activities which would put them at a disadvantage.

The AAO notes that, in his affidavit, dated February 2005, stated that he had been laid off which conflicts with testimony he gave to the psychologist in February 2005, indicating that he was employed by an import-export company as a manager. While it is unfortunate that may be unable to maintain the family's current standard of living and may have to lower the family's standard of living, the record does not contain any evidence to suggest that would be unable to financially support his family without the financial support or assistance of the applicant. The record reflects that the applicant has a successful career with the government prior to traveling to the United States. There is no evidence in the record to suggest that the applicant would be unable to obtain any employment that would provide a source of income that would ease financial obligations. Moreover, the applicant has family members in Uzbekistan, such as her mother, who may be able to assist her either financially or physically, which could ease financial obligations. The record indicates that, in 2002, earned approximately \$38,500. The record shows that, even without assistance from the applicant, earns sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. The record does not support a finding of financial loss that would result in an extreme hardship to if he had to support two households without additional income from the applicant, even when combined with the emotional hardship described below.

While counsel, [REDACTED] and the psychological report indicate that [REDACTED] parents and grandparents require assistance due to various medical ailments or suffer from ailments that would be exacerbated by the denial of the applicant's waiver, there is no evidence in the record to confirm that they suffer from any physical or mental illness that would cause them, [REDACTED] or the applicant's children to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While [REDACTED] indicates that he suffers from psoriasis and arthritis and that his children are at risk for the ailments which would be exacerbated by the denial of the applicant's waiver, there is no evidence in the record to confirm his diagnosis, prognosis, whether he requires treatment, whether the applicant's absence would exacerbate his condition or whether his children are at risk for developing such ailments. While [REDACTED] indicates that his youngest son suffers from speech delays and nocturnal enuresis which would be exacerbated by the denial of the applicant's waiver, there is no evidence in the record to confirm the youngest son's diagnosis, prognosis, whether he requires treatment, or whether the applicant's absence would exacerbate his conditions or trigger further developmental problems.

A psychological report indicates that [REDACTED] is suffering from acute stress disorder in relation to the applicant's immigration situation, which would be exacerbated by the denial of the applicant's waiver. The psychological report also indicates that the applicant's children are abnormally attached to the applicant and the denial of the waiver would cause them to suffer psychological problems at a later date. The record does not contain evidence that [REDACTED] has received psychological treatment or evaluation other than during the 90-minute appointment used to write the psychological report and it does not indicate whether he requires continued treatment. The record does not contain evidence that the children have ever received psychological treatment or evaluation and it does not indicate whether they require continued treatment. Therefore, the psychological report can be given little weight. Additionally, the AAO notes that the psychological report was issued after the Form I-601 was denied and that there was no mention of any psychological problems in the affidavit, which the applicant submitted with the Form I-601. There is no evidence to confirm that [REDACTED] or the applicant's children from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] may suffer some anxiety, stress or depression in regard to separation from his spouse and the applicant's children will essentially be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation.

Counsel contends that [REDACTED] and the applicant's children will suffer extreme hardship if they were to accompany the applicant to Uzbekistan because the children were born and raised in America, speak English fluently and are accustomed to American food, clothing, education system and communities, [REDACTED] parents and grandparents reside in the United States, the health care system is almost non-existent in Uzbekistan, the economy and education system in Uzbekistan is suffering, and there is a potential threat to the safety and security of the family from extremist groups. [REDACTED], in his affidavits, states that his youngest son suffers from speech delays and nocturnal enuresis for which he would be unable to receive treatment in Uzbekistan, his children have lived their entire lives in the United States and are completely integrated into the American lifestyle, their lives will be completely turned around, it would be close to impossible for him to find a job and adequately support his family in Uzbekistan, he and his children do not speak the language and his children would be deprived of the educational opportunities in the United States.

As discussed above, there is no evidence in the record to suggest that [REDACTED] or the applicant's children suffer from a physical or mental illness for which they would be unable to receive treatment in Uzbekistan. While the predominant language in Uzbekistan is Uzbek, Russian, [REDACTED]'s native language, is listed as a national language in Uzbekistan. *U.S. Department of State Background Reports, Uzbekistan, 2006, www.state.gov/r/pa/ei/bgn/2924.htm*. Both [REDACTED] and the applicant have higher education degrees from the former Soviet Union, which would aid in their employability in Uzbekistan and, as discussed above, the applicant had a successful government career prior to traveling to the United States. As such, there is no evidence in the record to suggest that the applicant and [REDACTED] would be unable to find any employment in Uzbekistan. Moreover, country conditions reports indicate that the economy is improving. *Id., www.state.gov/r/pa/ei/bgn/2924.htm*. While counsel asserts that [REDACTED] and the applicant's children's safety and security would be threatened by extremist groups, the State Department Travel Warning for Uzbekistan submitted by counsel only indicates that due to the possibility of terrorist attacks targeting Americans "U.S. citizens should remain vigilant about their own personal safety and avoid, if possible, locations where Americans and Westerners generally congregate in large numbers."

Counsel argues that the applicant's children's situation is similar to that of the extreme hardships faced by the respondent's child in *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001). While the hardships faced by [REDACTED] with regard to adjusting to a new culture, economy, and environment are what would normally be expected with any spouse accompanying a deported alien to a foreign country, when combined with the children's adjustment to a new culture, environment and language they would rise to level of extreme hardship. However, the AAO notes that, as U.S. citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] and the applicant's children would not experience extreme hardship if they remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the [REDACTED] factors, cited above, does not support a finding that the applicant's spouse and children would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] and the applicant's children will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse or mother is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse and children as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). 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 an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.