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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services *H*

## PUBLIC COPY

FILE:

Office: LOS ANGELES, CA

Date: JUL 05 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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director, Los Angeles, California. 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 Greece who was found to be inadmissible to the United States under 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 citizen of the United States and the parent of citizens of the United States. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and children.

The interim 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 Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated December 22, 2004.

On appeal, counsel contends that the decision of Citizenship and Immigration Services erred in that it failed to give any consideration to the hardship imposed on the applicant's United States citizen children; failed to give consideration to the medical conditions and other disabilities that evidence extreme hardship and failed to accord proper consideration to the extreme hardship imposed on the applicant's spouse. *Form I-290B*, dated January 25, 2005. In support of these assertions, counsel submits a brief; medical records for the applicant's child; a neuropsychological evaluation for the applicant's child and copies of photographs of the applicant's family. The entire record was reviewed and considered in rendering a decision.

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 -
  - (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 [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 . . .

On June 23, 1997, the applicant was convicted on five counts of Indecent Exposure in the Superior Court of Santa Ana, California. He was placed on probation for a period of three years and ordered to serve one day in jail. On June 17, 1993, the applicant was convicted of Indecent Exposure in the Municipal Court, North Judicial District, County of Orange, California. The applicant is a registered sexual offender.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse and children. 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 Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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

On appeal, counsel contends that the applicant's spouse and children would suffer extreme hardship as a result of remaining in the United States in the absence of the applicant. Counsel contends that the applicant's child suffers from Tourette Syndrome and that the ongoing programs of treatment and care currently undertaken on the child's behalf would be unavailable in the absence of the applicant. *Exhibit "A"*, undated. In support of these assertions, counsel submits a report from a physician, a letter providing a neurological evaluation from the same physician and a neuropsychological evaluation. The submitted documentation establishes that the applicant's child suffers from tics and that he has been diagnosed with Tourette Syndrome as well as symptoms of a potential learning disability. *See Report by [REDACTED]* dated August 30, 2004 ("Tourette syndrome...He is continuing to work with [REDACTED] re learning issues."). *See also Letter to [REDACTED] from [REDACTED]* dated March 29, 2004 ("My impression is that it is Tourette's syndrome...as well as some symptoms suggesting attention deficit hyperactivity disorder."). While any medical suffering endured by the applicant's child is regrettable, the record fails to establish that the presence of the applicant is necessary in order for the applicant's child to continue receiving treatment for his condition(s). The record reflects that the applicant's child receives ongoing treatment and care, including prescription medication and close monitoring. The record further indicates that the applicant's child is able to function on a daily basis and is progressing normally in school. *Id.*; *see also Neuropsychological Evaluation*, dated August 2004 ("Teacher report ... was within the expected range on all scales and indicated no emotional or behavioral difficulties in the classroom."). The record fails to reflect that the presence of the applicant is necessary in order for the child to receive appropriate care for his condition(s).

Counsel contends that the financial impact of the applicant's departure from the United States would be devastating to the applicant's family and indicates that this fact has been previously outlined and documented. *Exhibit "A"* at 4. The record contains an affidavit of the applicant's spouse in which she states that the applicant's departure would make it "virtually impossible [for her] to provide care and economic support [to] the couple's children". *Affidavit of [REDACTED]*, dated December 12, 2002. While the AAO sympathizes with the plight of the applicant's spouse, the record fails to offer documentation to substantiate this claim. The record reflects that the applicant and his spouse are both employed and that the applicant's

spouse is the primary breadwinner in the family. *See 2001 W-2 Forms for [REDACTED] and [REDACTED]* (reflecting income of \$26831.84 and \$13000.00 respectively). Although the applicant's spouse indicates that she would confront extreme financial hardship as a result of maintaining two homes, one for the applicant and one for herself and the children, the record fails to establish that the applicant would be unable to financially support himself in a location outside of the United States.

In addition, the record fails to adequately address the factors identified in *Matter of Cervantes-Gonzalez* including the qualifying relatives' family ties outside the United States and the conditions in the country or countries to which the qualifying relatives would relocate and the extent of the qualifying relatives' ties in such countries. Although counsel contends that ties outside of the United States are "practically non-existent" in the instant application, the record fails to address the subject comprehensively or to offer documentation reflecting the whereabouts of the family members of the applicant and his spouse. *Exhibit "A"* at 4. Moreover, although the record establishes that the applicant's son suffers with Tourette Syndrome and a potential learning disability, the record fails to address whether or not treatment and care is available in the country to which the qualifying relatives would relocate. In general, the record fails to address the hardship that would be imposed on the applicant's spouse and children as a result of relocation to Greece in order to remain with the applicant.

U.S. court decisions have repeatedly 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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse and children would endure hardship as a result of separation from the applicant or as a result of relocating to Greece in order to remain with the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and children caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.