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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: CLEVELAND Date: JUL 05 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waivers of Grounds of Inadmissibility under sections 212(h)(B) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h)(B) and 1182(i).

ON BEHALF OF APPLICANT:

[REDACTED]

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 District Director, Cleveland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Thailand who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant was further deemed inadmissible pursuant to section 212(a)(2)(D)(i) of the Act due to being convicted for an act of prostitution within 10 years of her entry to the United States and application for adjustment of status. The applicant seeks waivers of inadmissibility pursuant to sections 212(h)(B) and 212(i) of the Act, 8 U.S.C. §§ 1182(h)(B) and 1182(i), in order to remain in the United States and reside with her U.S. citizen husband.

The district director 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 District Director*, dated February 25, 2003.

On appeal, counsel for the applicant contends that the applicant's husband, mother-in-law, and daughter will suffer extreme hardship if the applicant is prohibited from remaining in the United States, and that the district director failed to fully consider the consequences for the applicant's family members. *Brief from Counsel*, received April 23, 2003.

The record contains a brief from counsel in support of the appeal; statements from the applicant, the applicant's husband, and the applicant's husband's friend and former employer; a copy of the applicant's marriage certificate; a copy of the applicant's husband's U.S. passport; a copy of the applicant's daughter's birth certificate; documentation regarding the applicant's mother-in-law's dialysis treatment; a copy of the applicant's and her husband's bank records; a letter verifying the applicant's and her husband's employment; a Form I-864, Affidavit of Support, executed by the applicant's husband on her behalf, and; documentation relating to the applicant's criminal history and entry to the United States. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(a)(2)(D)(i) states in pertinent part that:

(D) Prostitution and commercialized vice.-Any alien who-

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status [is inadmissible].

....

(F) Waiver authorized.- For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of [subparagraph] . . . (D) of subsection (a)(2) . . . if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(1) the alien is inadmissible only under subparagraph (D)(i). . . of such subsection . . . or

(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 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 on or about June 12, 1995, the applicant entered the United States using a fraudulent passport. Thus, the applicant entered the United States by fraud. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant does not contest this ground of inadmissibility on appeal.

On September 22, 1999, the applicant pled guilty to one count of prostitution in the State Court of Clayton County, Georgia, for which she received a sentence of a \$400 fine, \$60 court costs, and 11 months of incarceration. The applicant's sentence was probated for 12 months on the condition that she perform 40 hours of community service and remain free of further criminal violations. Accordingly, the applicant was

deemed inadmissible pursuant to section 212(a)(2)(D)(i) of the Act due to being convicted for an act of prostitution within 10 years of her entry to the United States and application for adjustment of status.

The applicant implied that she was wrongly convicted of prostitution, as she did not understand English well and she was unaware of what was happening when she was arrested. She provided that she pled guilty due to her attorney's advice and she was unaware of the consequences for immigration purposes. However, the applicant has not submitted evidence to show that a court has revisited her culpability or the circumstances of her guilty plea, thus the applicant has not established that her conviction was erroneous.

The applicant provided evidence that, at the conclusion of her probation, the State Court of Clayton County discharged her and exonerated her of any criminal purpose. The court stated that the applicant "shall not be considered to have a criminal conviction." *Order of State Court of Clayton County, Georgia*, dated July 27, 2001. Thus, the applicant's conviction was effectively expunged pursuant to the Georgia Act for Probation of First Offenders, OCGA §§ 42-8-60, 16-13-2. However, under current precedent, the applicant's expungement does not eliminate the applicant's conviction for immigration purposes. *See In re Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002).

Based on the foregoing, the applicant has not established that she was erroneously deemed inadmissible under section 212(a)(2)(D)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant or her child experience upon the applicant's deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship regarding the applicant's request for a waiver under section 212(a)(6)(C) of the Act is hardship suffered by the applicant's husband. 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).

Regarding her prostitution conviction, the applicant is not eligible for an exercise of discretion pursuant to section 212(h)(1)(A)(i) because she is inadmissible under another ground of inadmissibility. The applicant is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B).

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 regarding the applicant's request for a waiver under section 212(h)(1)(B) of the Act is hardship suffered by the applicant's husband and child. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h)(1)(B) of the Act.

The applicant is seeking waivers of inadmissibility under sections 212(h)(1)(B) and 212(i)(1) of the Act. As noted above, while hardship to the applicant's child may be properly considered in section 212(h)(1)(B) waiver proceedings, hardship to the applicant's child is not relevant in section 212(i)(1) waiver proceedings. The applicant must obtain a waiver for all grounds of inadmissibility to which she is subject in order to remain in the United States. Thus, in order to remain in the United States, the applicant must meet the

standard of section 212(i)(1) of the Act by showing that her husband will suffer extreme hardship, irrespective of hardship experienced by her child.

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).

The applicant's husband submitted a statement discussing hardships he would experience if the applicant is compelled to depart the United States. He stated that the applicant provides full-time care for their child, and that he would be unable to continue his work schedule and provide childcare simultaneously. *Statement from Applicant's Husband*, dated May 12, 2003. He explained that he is currently unemployed, but that his typical restaurant work schedule requires 12-hour shifts, often seven days per week, and he anticipates continuing this workload. *Id.* at 1. He stated that he relocated the applicant and his daughter to San Francisco in order that they may care for his mother. *Id.* He explained that his mother must undergo kidney dialysis three times per week, and he depends on the applicant to transport his mother to her appointments. *Id.* He noted that his mother is too ill to care for his daughter. *Id.* at 2. He indicated that he would endure additional financial hardship if he must support the applicant in Thailand. *Id.*

The applicant stated that she does not wish to be separated from her husband and her daughter, and that it would be an extreme hardship on her husband if she departs. *Statement from Applicant*, dated August 15, 2001.

On appeal, counsel for the applicant contends that the applicant's husband, mother-in-law, and daughter suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, received April 23, 2003. Counsel reiterates that the applicant's husband will have difficulty balancing his work schedule and childcare if the applicant departs the United States. *Id.* He contends that the applicant's husband will suffer financial hardship. *Id.* Counsel asserts that the district director failed to fully consider the consequences for the applicant's family members. *Id.* Counsel provides that the applicant's mother-in-law will experience hardship without the applicant's assistance, and that the applicant herself will have difficulty returning to Thailand. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant and her mother-in-law will endure if the applicant departs. However, hardship to the applicant and her mother-in-law is not a relevant concern in waiver proceedings under sections

212(h)(1)(B) and 212(i)(1) of the Act. Further, counsel asserts that the district director failed to fully consider hardship to the applicant's daughter, yet hardship to the applicant's daughter is not a relevant concern in waiver proceedings under section 212(i)(1) of the Act. While the AAO acknowledges that the applicant, the applicant's daughter, and the applicant's mother-in-law will bear significant consequences if the applicant's waiver application is denied, only hardship to the applicant's husband may be properly considered in section 212(i) waiver proceedings.

The applicant's husband explains that he will suffer economic hardship if the applicant departs the United States, largely due to the need to hire child care services for his daughter. However, the record lacks sufficient documentation to show the applicant's husband's current expenses, savings or other economic resources, or anticipated income. The applicant's husband indicated that he, the applicant, and his daughter currently reside with his mother, yet the applicant has not provided whether they must help pay a mortgage or rent. Nor has the applicant submitted other evidence of regular expenses, such as documentation of utility bills, automobile payments, or insurance premiums. 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)).

The applicant's husband provided that his typical work schedule is rigorous, yet he is currently unemployed. The applicant has not shown that her husband would have no flexibility in choosing new employment that affords more time for caring for his child. While the applicant's husband stated that his mother is too ill to participate in caring for his daughter, the record does not contain adequate medical documentation to support this assertion. The single document regarding the applicant's mother-in-law's health status consists of a brief letter confirming that she undergoes dialysis three times per week. The AAO is unable to determine her capacity to perform daily functions or participate in child care.

The applicant's husband expressed concern regarding his need to support the applicant financially in Thailand. Yet, the applicant has not shown that she would be unable to work in Thailand in order to meet her economic needs without significant burden in her husband.

The applicant and her husband have not discussed the emotional aspects of their possible separation. Thus, the applicant has not shown that her husband will endure extreme emotional consequences due to separation, should he remain in the United States. Their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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.

It is noted that the applicant's husband and daughter may relocate to Thailand with the applicant if they choose. The applicant has not discussed whether relocating abroad constitutes substantial hardship for her

husband and child. For example, the record does not reflect whether the applicant's husband has ties in Thailand, whether he speaks Thai, or whether he has employment prospects there. Again, 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. at 165. Yet, as U.S. citizens, the applicant's husband and daughter are not required to reside outside the United States as a result of the applicant's inadmissibility.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. As discussed above, the applicant must meet the more restrictive standard of section 212(i) of the Act in order to obtain a waiver of her inadmissibility under section 212(a)(6)(C)(i) of the Act and remain in the United States. As the applicant has failed to show that her husband will experience extreme hardship, she has not established that she is eligible for a waiver under section 212(i) of the Act. 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 waivers of grounds of inadmissibility under sections 212(h)(1)(B) and 212(i)(1) 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.