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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED] Office: FRANKFURT Date: **MAY 10 2006**

IN RE: [REDACTED]

PETITION: 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 PETITIONER: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge, Frankfurt, Germany, 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 citizen of Turkey who was born in Germany and has resided in Germany since birth. The applicant 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 is the spouse of a U.S. citizen and appears to be the father of a U.S. citizen child. He seeks a waiver of inadmissibility pursuant to sections 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and child.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 16, 2004.

The record reflects that, on May 9, 1995, the applicant was convicted of grievous bodily harm and sentenced to 2 years in jail, which were suspended. It is noted that the applicant was sentenced as a juvenile even though he was over the age of 18 at time of commission of this crime. On March 6, 1996, the applicant was convicted of attempted grievous extortionate robbery and embezzlement and sentenced to 2 years in jail, for which the applicant had already served six months and the remainder was suspended with 2 years of probation. On January 30, 2003, the applicant was convicted of willful bodily ill treatment or harming the health of another and was fined 1,200€. On December 17, 2003, the applicant married his spouse, [REDACTED] who is a U.S. citizen by birth.

On March 11, 2004, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The record shows that the applicant appeared at the U.S. Consulate in Frankfurt on June 16, 2004. The applicant was informed that he needed to file Form I-601 because he had been convicted of a crime involving moral turpitude. On June 16, 2004, the applicant filed the Form I-601 with documentation to support his claim that the denial of the waiver would result in extreme hardship to his family members. The record shows that the applicant appeared at the U.S. Consulate in Frankfurt again on July 1, 2004.

On November 16, 2004, the acting officer in charge issued a notice of denial of the application because the applicant had been convicted of a crime involving moral turpitude and had failed to establish that extreme hardship would be imposed on a qualifying family member.

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.

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

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I). . . 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 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 acting officer in charge based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction and admission to committing a crime involving moral turpitude. The applicant does not contest the acting officer in charge's determination of inadmissibility.

On appeal, the applicant contends that the district director failed to consider the combined effects of the financial and emotional hardships that [REDACTED] and the applicant's child faces if the applicant were not granted a waiver. *See Applicant's Brief in Support of Appeal*, dated December 7, 2004.

Hardship to the alien himself 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. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 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. 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 Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant was born and raised in Germany and is a citizen of Turkey. The record is unclear as to what the applicant's immigration status is in Germany. [REDACTED] was due to give birth to the applicant's child in November 2004, therefore the record indicates that the applicant and [REDACTED] have a one-year-old child who is a U.S. citizen by birth. [REDACTED] has resided in Germany since June 2001. The record reflects further that the applicant is in his 30's, [REDACTED] is in her 20's, and [REDACTED] and the applicant's child do not have any health concerns.

The applicant asserts that [REDACTED] and her child would suffer financial hardship if they were to return to the United States without the applicant. [REDACTED] in her affidavit, states "the financial responsibility that I would have for the family would be impossible to manage alone." However, the record indicates that [REDACTED] has been employed as a missionary/journalist in Germany from June 2001 until at least February 2004. The record contains no evidence to indicate what [REDACTED] yearly salary or costs of living were while she resided in the United States or what the applicant's potential income would be in the United States. Furthermore, the record indicates that [REDACTED] has family members in the United States who may be able to support her financially in the absence of her husband. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] and her child if [REDACTED] had to support herself and her child without additional income provided by the applicant.

The applicant asserts that [REDACTED] and her child would suffer emotional hardship if they returned to the United States and the applicant remained in Germany. [REDACTED] in her affidavit, argues that she will suffer extreme emotional hardship because the applicant would not be present for the birth of their child. The AAO is unable to take this argument into consideration because it appears that the birth occurred in the past, and is no longer a hardship that [REDACTED] would suffer. [REDACTED] in her affidavit, states "the child would spend the first months or years of his/her life without the understanding of a father who has been excited from the day he found out we were pregnant." The applicant does not assert, and there is no evidence in the record to suggest, that [REDACTED] or her child suffer from a physical or mental illness that would cause them to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may involve 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. Furthermore, while it is unfortunate that a single parent would essentially raise the applicant's child and the child may not have frequent contact with the applicant, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Additionally, according to the record, [REDACTED] and her child have family members who may support them emotionally in the absence of the applicant.

The record is not clear as to whether [REDACTED] and her child would remain in Germany or return to Turkey with the applicant. During the interview [REDACTED] indicated she would remain in Germany for two-years before traveling to Turkey with the applicant. The record is unclear as to whether the applicant and [REDACTED] may chose to remain in Germany or whether they would be required to return to Turkey. Therefore, the AAO will review the applicant's contentions in regard to financial and emotional hardship to be suffered by [REDACTED] and her child if they did not return to the United States as they relate to both Germany and Turkey.

The applicant contends that [REDACTED] and her child would suffer hardship if they were to remain in Germany with the applicant or travel to Turkey with the applicant. [REDACTED] affidavit indicates that her "obvious desire that [her] kids can grow up knowing their grandparents and [her] extended family members . . . is possible, but as an incomplete family [because the applicant] . . . will never be able to accompany us for family vacations or holidays spent with family in the States." [REDACTED] in the brief, states that "it is extreme to encourage the separation of a family and as a result that family must live at a standard less than what would be available in the United States" and her child "will be denied the right to experience their home culture and country. Ethnic obstacles such as language learning and cultural adjustments will no doubt add challenges that would have otherwise not been experienced." The applicant does not assert, and there is no evidence in the record to suggest, that [REDACTED] or her child suffer from a physical or mental illness that would cause them to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. The applicant does not assert, and there is no evidence in the record to suggest, that the applicant and [REDACTED] would be completely unable to financially support the family whether they reside in Germany or Turkey. The applicant only claims that [REDACTED] and the child will "live at a standard less than what would be available in the United States." Moreover, the record indicates that the applicant has family members in Germany and Turke who may be able to provide financial and emotional assistance. While the hardships faced by [REDACTED] and her child with regard to adjusting to a new culture, economy and environment are unfortunate, they are what would normally be expected with any spouse or child accompanying a deported alien to a foreign country. Additionally, while it would be unfortunate that the applicant's child would not have the opportunity to experience family vacations in the States with her/his father or to "experience their home culture or country", these are hardships that would normally be expected with any family accompanying a deported alien to a foreign country. Finally, the AAO notes that, as U.S. citizens, the applicant's spouse and child are not required to reside outside of the United States as a result of denial of the applicant's waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse and child would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] and her child will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or parent 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 his U.S. citizen spouse or child 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 he merits a waiver as a matter of discretion. However, the AAO does note that the applicant’s arguments in regard to the age at which the applicant committed his crimes, the length of time that has passed since commission of the crimes, whether his spouse was aware of his criminal activity prior to marriage, and date on which they began to reside together relate to discretionary factors and not to factors in determining whether extreme hardship to qualifying family members exists.

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.