



U.S. Citizenship
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[REDACTED]

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FILE:

[REDACTED]

Office: CHICAGO DISTRICT OFFICE

Date: FEB 22 2007

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:

[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, Chicago, Illinois, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of Poland, was found 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 two or more crimes involving moral turpitude. The applicant, who is the spouse of a United States citizen and the mother of a United States citizen, seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her husband and son.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband and son would suffer extreme hardship if she were required to return to Poland, and submits additional documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act provides, in pertinent part:

(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:

(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) (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 alien¹

¹ The AAO notes that section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, CIS must then assess whether to exercise discretion.

Regarding the applicant's grounds of inadmissibility, the record reflects that she was convicted of five crimes involving moral turpitude.² The applicant was arrested five times between 1986 and 1993: (1) she was arrested by the Norridge, Illinois Police Department on March 22, 1986 and charged with retail theft; (2) she was arrested by the Chicago, Illinois Police Department on March 5, 1987 and charged with retail theft; (3) she was arrested by the Oak Brook, Illinois Police Department on October 1, 1988 and charged with retail theft; (4) she was arrested by the Joliet, Illinois Police Department on October 31, 1991 and charged with retail theft; and (5) she was arrested by the Morton Grove, Illinois Police Department on April 23, 1993 and charged with theft. She was convicted of the first three crimes on December 5, 1988 and sentenced to 24 months of concurrent probation. She was convicted of the latter two crimes on February 1, 1994 and sentenced to 30 months of probation. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on October 29, 2001. The instant Form I-601 was filed on July 29, 2004.

On appeal, counsel contends that the district director erred in failing to find that the applicant had not demonstrated that extreme hardship would befall a qualifying relative. Specifically, counsel states that the district director used an incorrect standard of proof in adjudicating the petition. Counsel states that the district director failed to address the extreme hardship that the applicant's son would face if his mother returned to Poland. Counsel also points to four factors present in this case that favor an exercise of discretion: (1) the applicant's long-term residence in the United States; (2) the applicant's long-term marriage; (3) the applicant's marriage to a United States citizen; and (4) the fact that the applicant's son is a United States citizen.

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, 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 pursuant to section 212(i) of the Act. 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.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

² The AAO notes that the applicant does not dispute the director's finding that these offenses constituted crimes involving moral turpitude.

The record reflects that the applicant's husband is a fifty-three-year-old citizen of the United States. He and the applicant have been married since October 16, 1997. The applicant also has a United States citizen son, who was born June 15, 1989. The applicant is a full-time homemaker. The applicant's entire claim that the qualifying family members would face extreme hardship as a result of her departure is based upon separation from family. The applicant does not assert that the family would suffer financially upon her departure, nor do her husband or son have any medical concerns present that would be exacerbated if they were to accompany her to Poland.

The record contains six statements in support of the applicant's waiver application. The first statement, from her husband, states that she is a good woman, that she takes care of her son while her husband works long hours, that the family would be "broken up" if the applicant were required to return to Poland, and that her son would likely return with her to Poland were she to return.

The second statement, from the applicant's stepdaughter, notes the close nature of the family. She also states that the applicant's son depends on the applicant "for everything," that she is the network that runs the household, and that the applicant's son is "going through a rough time now."

The third statement, from the applicant's son, states that she is the "most important part" of her son's life. He also states that he "couldn't handle" her returning to Poland, that requiring her to return "would be like taking the best part of my life away from me," and that he does not think he can "make it" without the applicant's presence.

The fourth and fifth statements, from the applicant's parish priest and the assistant principal at her son's school, attest to her good character. They do not, however, identify any extreme hardships that her son or husband, the qualifying relatives, would face if she were to return to Poland.

The sixth statement comes from the applicant herself. She states that she is ashamed of her past actions, and that her parents did not raise her to behave in such a way. However, other than a statement that she cares for her son and the couple's large family, she does not identify any extreme hardships that her son or husband would face if she were to return to Poland.

The AAO finds that the district director properly denied the waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's husband and son would suffer hardship beyond that normally expected upon removal of a parent or spouse. Moreover, the AAO notes that the son is nearly 18 years old. Nor has there been any discussion of any hardship that the applicant's husband and son would face if they were to return with her to Poland.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her United States citizen husband and son would suffer hardship that is unusual or beyond that normally expected upon removal of a parent or spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her United States citizen spouse and child as required under INA § 212(h), 8 U.S.C. § 1186(h). As extreme hardship has

not been established, no purpose would be served in determining whether the applicant warrants a favorable exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.