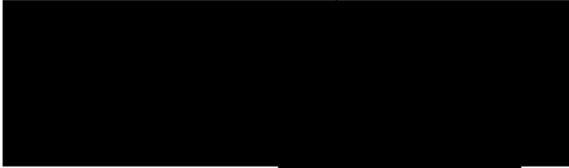




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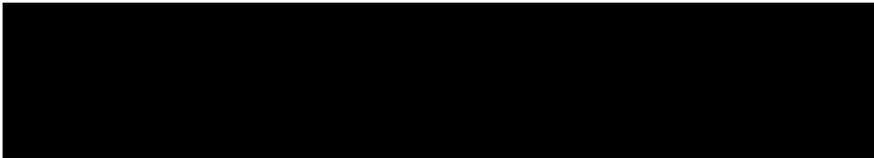
IN RE:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, IL. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Syria and citizen of Canada 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 a crime involving moral turpitude. The record indicates that the applicant is married to a U.S. citizen and has a U.S. citizen child. The applicant seeks a waiver of inadmissibility in order to reside with his wife and child in the United States.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and child. The application was denied accordingly. *See District Director Decision*, dated November 19, 2004.

On appeal, counsel states that the nature and effect of the applicant's criminal conviction should render the applicant admissible and the denial of his admission would cause extreme hardship to his U.S. citizen spouse and child. *Counsel's Appeal Brief*, dated January 15, 2005.

The record indicates that on October 24, 1997 the applicant was convicted in Canada of Sexual Assault. Sexual Assault under the Canadian Criminal Code, Section 271, carries a maximum sentence not to exceed 10 years or on summary conviction, imprisonment not to exceed 18 months. The applicant served 60 days in prison and 12 months probation.

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

(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.

ii) Exception-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

Section 212(h) states in pertinent part that:

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

(1)(A) [I]t is established to the satisfaction of the Attorney General [Secretary of Homeland Security] that-

(i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; 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 [Secretary of Homeland Security] 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 actions leading up to this conviction occurred less than 15 years from the present time. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act.

Section 212(h)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is not considered in section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's spouse, parent and/or child. 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).

In his appeals brief, counsel asserts that the applicant's case is similar to that of *Matter of Jose Feliz*, 29 Immig. Rptr. B1-1, April 13, 2004, where the Board of Immigration Appeals (BIA) determined that the respondent deserved discretionary relief. The AAO notes that a case involving the sole issue of discretionary relief is different from a waiver application. As stated above, the applicant must establish extreme hardship to a qualifying family member prior to any determination regarding the exercise of discretionary relief. If the applicant does not meet the burden of proof regarding extreme hardship, discretionary relief is not considered by the AAO, as it would serve no purpose.

The AAO notes that extreme hardship to the applicant's spouse and/or child must be established in the event that they reside in Canada or in the event that they reside in the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in review of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse and/or child in the event that they reside in Canada. In her statement, dated December 7, 2004, the applicant's spouse states that the applicant would not have a job if he moved back to Canada and that she and her child would be

homeless if they moved with him. In a letter, dated December 6, 2004, [REDACTED], a psychiatrist with the Skokie Rehabilitation Center, states that the applicant's spouse would suffer emotionally by relocating to Canada because she would then be separated from her parents. He states that the applicant's spouse sees herself as the only support for her parents who are otherwise unable to care for themselves. [REDACTED] states that in his opinion, making the applicant's spouse choose between being separated from her parents or being separated from her husband could lead to unpredictable results, including suicide. The record includes a prescription for the applicant's spouse from [REDACTED]. Although the input of any mental health professional is respected and valuable, the AAO notes that [REDACTED]'s report is based on a single meeting with the applicant's spouse. The record fails to reflect that [REDACTED] has an ongoing relationship with the applicant's spouse or that he has been providing any treatment for the bouts of depression the applicant's spouse states she has suffered in the past. Moreover, the conclusions reached in the submitted report, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychiatrist, thereby rendering [REDACTED] findings speculative and diminishing the report's value in determining extreme hardship.

The applicant also submitted a letter from [REDACTED], a family friend, which states that the applicant's spouse's parents do not speak English and the applicant's spouse takes them to their doctor's appointments and glaucoma specialist. The AAO notes, however, that no documentation was submitted to prove that the applicant's spouse's parents require her care to maintain their wellbeing. In addition, the applicant submitted no evidence that he would be unable to find employment in Canada sufficient to support his family. The AAO recognizes that the applicant's family will suffer hardships as a result of relocating to Canada, however, the current record does not reflect that these hardships rise to the level of extreme. Thus, the record does not reflect that relocation to Canada will result in extreme hardship to the applicant's spouse and/or child.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and/or child remain in the United States. The applicant's spouse asserts that she will suffer extreme emotional and financial hardship if the applicant is removed from the United States. The applicant's spouse states that she cannot eat and has lost 80 pounds because of the stress, anxiety and depression the applicant's inadmissibility is causing her. [REDACTED] evaluation indicates that the applicant's spouse is reporting suicidal ideations. He also states that she is suffering from constant body aches, headaches, nausea, vomiting and irritable bowel syndrome as a result of the applicant's inadmissibility, and has a history of instability and anxiety. Again, the AAO notes that no documentation was submitted to establish that the applicant's spouse has had previous emotional problems or to support her claims regarding the physical effects of her anxiety regarding her husband's removal from the United States.

The applicant's spouse also asserts that she and her child will suffer financially from being separated from the applicant and will become homeless. The record indicates that in 2003 the applicant and his spouse's combined income was \$13,693. No evidence regarding family expenses was submitted. Furthermore, no documentation was submitted to demonstrate that the applicant's spouse's immediate family could not help her with expenses. Therefore, the AAO finds that the current record does not establish that the applicant's spouse and/or child would suffer extreme hardship as a result of the applicant's inadmissibility.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or child 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 an application for waiver of grounds of inadmissibility under section 212(i) 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.