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U.S. Citizenship  
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Services

A2

FILE:



Office: VERMONT SERVICE CENTER  
[consolidated therein]

Date: MAY 30 2007

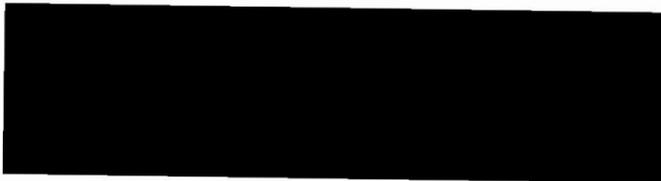
IN RE:



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 Director, Vermont Service Center. 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 India and citizen of Canada who was found to be inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of crimes involving moral turpitude, and 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), as an alien with multiple criminal convictions. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen spouse and children.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's United States citizen spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated July 18, 2005.

On appeal, the applicant, through counsel, asserts that the applicant's spouse and children are suffering extreme hardship through their separation from the applicant. *Counsel's Brief*, filed September 19, 2005.

The record includes, but is not limited to, counsel's brief, statements by the applicant's wife and children, reference letters from the applicant's friends and acquaintances, medical documentation pertaining to the applicant's wife's medical conditions, a letter from Dr. Luis Rivera-Tovar regarding the applicant's wife's psychological wellbeing, and court dispositions for the applicant's convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(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...

(B) *Multiple criminal convictions.*—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

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

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...the 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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien’s applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that the applicant initially entered the United States on August 20, 1964, on a J-1 nonimmigrant visa. In 1968, the applicant moved to Canada. On May 24, 1969, the applicant married [REDACTED] a United States citizen, in Glen Rock, Pennsylvania. On November 28, 1982, the applicant filed a Form I-130, which was approved on or about November 29, 1982. On November 29, 1982, the applicant filed an Application for Immigrant Visa and Alien Registration, which was approved on March 17, 1983. On July 9, 1983, the applicant entered the United States on a IR-1 immigrant visa. The applicant returned to Canada and subsequently lost his resident status. On September 12, 1994, the applicant was convicted of eleven (11) counts of indecent assault and one (1) count of sexual assault under sections 149(1) and 246.1 of the Criminal Code of Canada, respectively. The applicant was sentenced to four (4) years imprisonment on each charge to be served concurrently. In January 1996, the applicant’s wife

moved back to the United States. On July 30, 2001, the applicant filed a Form I-130, which was approved on March 1, 2002. On January 21, 2003, the applicant changed his name to [REDACTED]. On May 20, 2004, the applicant filed an Application for Immigrant Visa and Alien Registration (DS-230). On March 21, 2005, the applicant filed a Form I-601. On July 18, 2005, the Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

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.

Counsel asserts that the applicant was improperly convicted of the twelve (12) charges of indecent assault and sexual assault on September 12, 1994. Counsel's assertion is unpersuasive. "[C]ollateral attacks upon an [applicant's] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned." *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted). Moreover, this office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See id*; *Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980) (the Service cannot go behind the judicial record to determine the guilt or innocence of an alien for a criminal offense). It appears the applicant exhausted all of his appeal rights, by appealing to the Supreme Court in Canada, which dismissed his appeal.

Counsel asserts that the applicant's United States citizen spouse and children would face extreme hardship if the applicant were not allowed to enter the United States. Counsel states "there is the extreme financial hardships [sic] already imposed on the family by the loss of the prime wage-earner." *Counsel's Brief*, page 4, filed September 19, 2005. The AAO notes that documentation in the record establishes that the applicant's wife is employed as a dental hygienist and there is no evidence that the applicant is or was the primary wage-earner for his family. Additionally, the applicant's daughter and son reside with or near the applicant's wife, and there was no documentation submitted to establish that the applicant's children, who are adults, could not help their mother financially. Counsel states the applicant's family is "deprived...of the emotional support that a father necessarily brings to the family." *Id.* at 5. The AAO notes that the applicant's wife has been

residing in the United States without the applicant since 1996, and it has not been established that she has suffered extreme hardship by being separated from the applicant. Counsel states the applicant's wife's "health has significantly deteriorated...and she now is suffering from degenerative arthritis." *Id.* Dr. Pasumarthy states the applicant's wife has "had to go through two operations on her right arm, and she is righthanded [sic]. She has healed slowly but surely....[S]he also has to endure pain due to arthritis." *Letter from [REDACTED] M.D., [REDACTED]* dated September 13, 2005. The AAO notes that documentation in the record establishes that the applicant's wife suffers from various medical conditions, including cervical arthritis and fibromyalgia; however, she still works as a Dental Hygienist and is able to help care for her elderly mother. *See letter from [REDACTED]* filed March 21, 2005 ("During the last two years [her] parents' health has deteriorated significantly. Therefore, [she] have had to assume greater responsibilities for their care. I must also continue to work full-time with a degenerative arthritis in my cervical discs, to support myself financially."). Dr. [REDACTED] states the applicant's son suffers from "attention deficit disorder;" however, there were no professional evaluations on the applicant's son's mental problems for the AAO to review. *Letter from [REDACTED] M.D, supra.* The record contains a letter from Dr. [REDACTED] who states the applicant's wife has been under his care since August 27, 2004 and he diagnosed her with "Depressive Disorder." *Letter from [REDACTED] Ph.D., [REDACTED]* dated August 31, 2005. Dr. [REDACTED] states the applicant's wife's "already stressful life came to crescendo in the past few months with the death of her father and the diagnosis of serious heart problems for her mother...While [the applicant's] presence here would not prevent the problems or the anguish she is going through, it would be a much needed psychological and emotional support for [the applicant's wife]." *Id.*

Counsel fails to establish extreme hardship to the applicant's spouse and children if they remain in the United States. As United States citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, the record fails to demonstrate that the applicant is unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO also finds the applicant failed to establish that his spouse and children would suffer extreme hardship if they joined him in Canada. The applicant's children were born in Canada and his wife resided in Canada for many years. The applicant failed to demonstrate whether or not they have any family ties in Canada or that his spouse would be unable to receive treatment for her medical conditions in Canada.

United States 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 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's spouse will endure, and has endured, hardship as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of removal 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 sections 212(a)(2)(A) and 212(a)(2)(B) 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.