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U.S. Citizenship
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OCT 30 2007

FILE:

Office: BANGKOK DISTRICT

Date:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

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 waiver application was denied by the District Director, Bangkok, Thailand. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Australia, was found to be inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(2)(A)(i)(I) and §1182(a)(2)(B), for having been convicted of crimes involving moral turpitude. The record indicates that the applicant has a U.S. citizen spouse and a U.S. citizen child. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with her family in the United States.

The district director based the finding of inadmissibility under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Act and found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. He denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director, October 6, 2005.*

On appeal, the applicant states that her husband is suffering extreme hardship while residing in Australia and that she has been rehabilitated and would not negatively effect the welfare of the United States if found to be admissible. *Form I-290B, dated October 23, 2005.*

The record indicates that the applicant has five criminal convictions under Australian law: her first conviction occurred on November, 1, 1990 for forging and uttering; on January 12, 2000, November 17, 2000, and October 27, 2003 she was convicted of theft by deception; and on September 19, 2002 she was convicted of fraud.

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

(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, that:

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) (A) . . . it is established to the satisfaction of the Attorney General 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 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 AAO notes that the Board of Immigration Appeals held that any crime involving fraud is almost always a crime involving moral turpitude. *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992). The applicant has not provided documentation to show that her convictions would fall into the very limited exception to this rule which concerns false statements not amounting to perjury.

The record indicates that the applicant was convicted of offenses that were committed in 1999, 2000, 2001, and 2003. Her current application for adjustment of status was filed less than 15 years after those activities; she is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. She is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

A section 212(h)(1)(B) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a "qualifying relative," *i.e.*, the U.S. citizen or lawfully resident spouse, parent or son or daughter of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, in this case the applicant's U.S. citizen spouse or child, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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.

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 AAO notes that extreme hardship to a qualifying relative must be established in the event the applicant's spouse and/or child resides in Australia or in the event that the applicant's spouse and/or child resides in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The current hardship record in the applicant's case includes a letter from the applicant's spouse and three letters from a Reverend [REDACTED] Senior Counselor at Newlife Care Incorporated, and a June 2005 statement from the applicant. The applicant's spouse explains that, previously, he, the applicant, and his daughter were living with his mother-in-law in Australia, but had to move because of threats made against him by his father-in-law, who is an alcoholic. *Applicant's Spouse Letter*, dated October 23, 2005. He states that on May 22, 2005, his father-in-law threatened to kill him. *Id.* The letters from [REDACTED] support this claim. He states that on Tuesday, May 24, 2005 the applicant reported to him that her father threatened to kill her spouse. *Letter from [REDACTED]* dated October 24, 2005. He states that she has also told him about other threats made towards her and her family. *Letter from [REDACTED]* dated September 28, 2005. A statement from the applicant reports the specific threats made against the applicant's spouse by her father. *Statement from the Applicant*, dated June 2005. [REDACTED] also states that he has known the applicant for several years and counseled her for a gambling problem. *Letter from [REDACTED]*, dated October 24, 2005. He states that he believes she suffers from Pathological Gambling. *Id.*

The AAO recognizes the seriousness of the applicant's family's situation, however, the record does not establish that the threats made against the applicant's spouse necessitate his relocation to the United States. No documentation was submitted to show that the applicant and her family could not relocate to another location in Australia, away from her alcoholic father. The applicant's spouse's letter reports that he and the applicant have moved to a new location. There is no indication in the record that the applicant's spouse continues to receive threats from his father-in-law at this location. In addition, the applicant's U.S. citizen spouse is not required to reside outside of the United States and no evidence has been submitted to support a finding that residing in the United States, separated from the applicant, would cause him extreme hardship.

Again, extreme hardship to the applicant's spouse and/or child must be established in the event the applicant's spouse and/or child reside in Australia or in the event that the applicant's spouse and/or child reside in the United States. The current record does not establish hardship in either case.

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, when considered in its totality finds that the applicant has failed to show that her U.S. citizen spouse and child would suffer hardship that is unusual or beyond that which

would normally be expected upon removal. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.