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U.S. Citizenship
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SEP 17 2007

FILE:

[REDACTED]

Office: ROME, ITALY

Date:

IN RE:

[REDACTED]

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:

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 Regional Immigration Attache (RIA), Rome, Italy, 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 a crime involving moral turpitude. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to return to the United States and join his wife.

The RIA 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 his wife would suffer extreme hardship if he is required to remain in Poland. 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)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [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 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 alien

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 the applicant pleaded guilty to second degree assault on July 31, 1990. He was sentenced to four years in prison (which was suspended), and three years of probation. He was ordered to pay restitution to the victim of his assault for all out-of-pocket medical expenses. The applicant was removed from the United States on May 3, 2000.

As a preliminary matter, the AAO concurs with the RIA's determination that the applicant's crime constituted a crime involving moral turpitude.¹ Although second degree assault is sometimes not a crime involving moral turpitude, courts are split on the matter. When analyzing whether an applicant's conviction under a second degree assault statute constitutes conviction of a crime involving moral turpitude, CIS must examine both the statute in question as well as the facts surrounding the applicant's arrest and evaluate the degree of violence or possible danger to others involved in commission of the crime. The presence or absence of criminal intent as an essential element of the offense is also a factor to consider.

In the instant case, the AAO notes that the applicant was convicted under section 53a-60 of Connecticut General Statutes. In *Nguyen v. Reno* 211 F.3d 692 (1st Cir.2000), the First Circuit Court of Appeals determined that conviction under section 53a-60 in fact constituted a conviction of a crime involving moral turpitude. The AAO therefore concurs with the RIA's determination that the applicant has been convicted of a crime involving moral turpitude.

As noted previously, the applicant pleaded guilty to the crime involving moral turpitude on July 31, 1990, which is a period of time more than fifteen years ago. Thus, a waiver of inadmissibility is now available to the applicant under section 212(h)(1)(A) of the Act. As fifteen years had not yet passed at the time the RIA issued her decision, she did not address section 212(h)(1)(A) of the Act. The waiver application may not be approved under section 212(h)(1)(A) of the Act, however, as the record contains no evidence or argument to demonstrate that the applicant has been rehabilitated and that, given the serious nature of his crime, his admission would not be contrary to the national welfare, safety, or security of the United States.

Having found the applicant ineligible for a waiver under section 212(h)(1)(A) of the Act, the AAO will next turn to the specific matter presented on appeal: whether denial of the waiver application will result in extreme hardship to the applicant's United States citizen wife.

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. These factors

¹ The AAO notes that the applicant does not dispute the director's finding that this offense constituted a crime involving moral turpitude.

include, with respect to the qualifying relative, the presence of family ties to United States 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.

The record reflects that the applicant's wife is a fifty-eight-year-old citizen of the United States. She has been a citizen of the United States since March 1, 2001. She and the applicant have been married since November 25, 1995. They have no children together.

In a letter dated December 7, 2004, the applicant's wife states that her health condition has worsened since the applicant was removed; that she has metabolic and cardiovascular problems, specifically hyperlipidemia and hypertension; that she has no one in the United States to care for her; that she needs the constant care of the applicant; that the cost of living is rising and it is becoming hard for a single woman to carry all expenses; that she is getting more and more medical bills to pay; that it is becoming harder for a woman her age to secure employment offering health insurance; that she has to help the applicant financially because of the unemployment in Poland; and that the couple has already "paid a penalty."

The record also contains a letter from the applicant's wife's physician, dated December 4, 2004. He states that the applicant's wife has metabolic and cardiovascular problems, specifically hyperlipidemia and hypertension; that she is under considerable stress and depression due to separation from the applicant; and that she currently takes Lipitor, Diovan, and Zoloft to manage her medical issues.

Regarding hardship to his wife, the applicant states on appeal that she is sick; that it is hard for her to keep up with her home and obligations; that it is hard for both of them to run separate households; and states his opinion that he has paid his price.

In order to demonstrate extreme hardship, the applicant must demonstrate that his United States citizen spouse would suffer hardship beyond that normally expected upon the removal of a spouse. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and

hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

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 wife would face extreme hardship if the applicant's waiver application is denied. The record does not establish that she will face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or parent is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the emotional hardship of separation is a common result of separation and does not rise to the level of "extreme" as contemplated by statute and case law. Although the applicant has submitted evidence that his wife has health concerns, he has not demonstrated that she requires the applicant's presence in order to manage those problems, nor has he explained how she is presently managing those problems without him. Nor has he demonstrated that she would face extreme hardship if she were to join him in Poland.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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 has failed to establish extreme hardship to his United States citizen spouse as required under INA § 212(h), 8 U.S.C. § 1186(h).

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, 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.