

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY



FILE:

Office: MOSCOW, RUSSIA

Date: JAN 15 2008

IN RE:

Applicant:



APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-In-Charge (OIC), Moscow, Russia, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed December 27, 2005. The record contains no evidence that a brief or additional evidence was filed within 30-days. Therefore, the record must be considered complete.

The record reflects that the applicant is a native and citizen of Armenia 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 a crime involving moral turpitude, and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. 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 sections 212(h) of the Act, 8 U.S.C. § 1182(h), and 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his United States citizen spouse and stepchildren.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Officer-In-Charge Decision*, dated December 8, 2005.

On appeal, the applicant states that "[t]he I-601 application fully meets the legal definition of extreme hardship." *Form I-290B, supra*.

The record includes, but is not limited to, statements from the applicant and his wife, the applicant's marriage certificate, and letters of recommendations from the applicant's family, friends, and co-workers. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was arrested for grand theft auto on February 23, 1992, but the case was dismissed due to lack of evidence. On August 15, 1992, the applicant was arrested for burglary and was sentenced to five (5) days in jail and one (1) year probation. On July 24, 1993, the applicant was arrested for burglary, but the case was dismissed *in furtherance of justice*.

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...

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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

- ...
- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that on November 18, 1989, the applicant entered the United States on an H-1 temporary worker nonimmigrant visa, with authorization to remain in the United States until December 13, 1989. On August 19, 1992, an Order to Show Cause and Notice of Hearing (OSC) was issued against the applicant. On January 5, 1993, an immigration judge granted the applicant voluntary departure until February 5, 1993. The applicant received an extension of his voluntary departure until May 2, 1993. The applicant failed to depart the United States when required. On May 3, 1993, a Warrant of Deportation (Form I-205) was issued against the applicant. On June 7, 1997, the applicant married [REDACTED], a United States citizen, in Washington. On March 28, 2003, a second Form I-205 was issued against the applicant. On August 30, 2004, a third Form I-205 was issued against the applicant. On September 1, 2004, the applicant was removed from the United States. On May 23, 2005, the applicant's wife filed a Form I-130 on behalf of the applicant, which was approved on the same day. On June 21, 2005, the applicant filed an Application for Immigrant Visa and Alien Registration (DS-230), which was denied on the same day. On June 21, 2005, the applicant filed a Form I-601. On December 8, 2005, the OIC 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) and section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violations of sections 212(a)(2)(A)(i)(I) and 212(a)(9)(B)(i)(II) 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, while a waiver under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon removal is irrelevant to sections 212(h) and 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse and stepchildren. 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.

Regarding the applicant's criminal record, he states that he is "ashamed and disappointed in [himself]. There is no excuse for [his] actions." *Applicant's Statement*, undated. The AAO notes that the applicant explained his arrests on February 2, 1992 and July 24, 1993; however, he failed to explain the circumstances surrounding the August 15, 1992 arrest. The applicant states in the United States, he worked as "an independent Jeweler...[and he was] entrusted with many thousands of dollars worth of their diamonds, platinum, and gold...In [his] rejection letter it says that [the applicant] working in America shows [his] total disregard for United States Immigration laws, that is honestly not the way [he] felt or saw it...[he was] trying to survive and send money to [his] family in Armenia." *Id.* However, the AAO finds that even if the applicant was sending money to his disabled mother and sister in Armenia, his periods of unauthorized employment is an unfavorable factor and it is a violation of the United States immigration law.

The applicant states he is "struggling to make a living" in Armenia. *Id.* The AAO notes that neither the applicant nor his wife indicated whether the applicant's wife is working in Armenia to help with the household expenses, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Armenia. The applicant and his wife state that she is suffering emotional hardship by being separated from her children. "Watching [his] wife being separated from [their] children, [he] feel[s] completely helpless...[He] told [his] wife to stay in America with the children, but they all decided together that she [go to Armenia]." *Id.* However, the AAO notes that there are no professional evaluations for the AAO to review to determine how the applicant's wife's mental, emotional, and/or psychological health has been affected by the applicant's immigration status or by being separated from her children. The AAO notes that the applicant's wife made the decision to move to Armenia on October 14, 2004, over three years ago, and the applicant has not established that she is suffering extreme hardship by being separated from her children. Additionally, as a United States citizen, the applicant's wife can return to the United States at any time. The applicant's wife indicates that she suffers from severe asthma; however, there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. Additionally, it has not been established that the applicant's wife has been unable to receive treatment for her asthma in Armenia for the last three years. The applicant's wife states she is suffering extreme hardship by being separated from her father, who suffers from a heart condition and high blood pressure. *See Statement from [REDACTED]* undated. The AAO notes that the applicant's father resides in California, while the applicant's wife resided in Washington; and it has not been established that the applicant's wife's father cannot provide for his daily needs without her. The applicant's wife indicates that her husband is suffering hardship by being separated from his stepchildren; however, as stated above, hardship the alien himself experiences upon removal is irrelevant to sections 212(h) and 212(a)(9)(B)(v) waiver proceedings. Additionally, the AAO notes that the applicant's stepchildren did not provide statements or affidavits regarding the extreme hardship they are suffering by being separated from the applicant. The AAO finds that the applicant failed to establish that his wife is suffering extreme hardship by joining him in Armenia.

In addition, the applicant failed to establish extreme hardship to his spouse if she returns to the United States. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. There was no documentation submitted establishing that the applicant's wife will experience extreme hardship as a result of the separation from the applicant. She may,

at any time, return to the United States where she will be able to see her children and father and receive any medical treatment she may need.

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 hardship as a result of her husband's inadmissibility. 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 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)(9)(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.