

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H2



FILE:

Office: FRANKFURT, GERMANY

Date: JUL 07 2008

IN RE: Applicant:



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

ON BEHALF OF PETITIONER:

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, Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland. The record reflects that he was convicted of Battery by the District Court in Nisko, Poland, on May 20, 2004. As a result of his conviction, the applicant was ordered to serve two years of probation and pay a fine. On the basis of this conviction, the applicant was found to be 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 beneficiary of an approved Petition for Alien Relative filed on his behalf by his U.S. citizen brother. He sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), claiming that his inadmissibility would cause extreme hardship to his lawful permanent resident mother.

The officer in charge found the applicant ineligible for a waiver of inadmissibility given his failure to establish that his lawful permanent resident mother would experience extreme hardship if the waiver was denied. *Decision of the Officer in Charge.*

On appeal, the applicant's mother requests reconsideration of her medical and financial circumstances. She maintains that, taken together, her circumstances warrant approval of the waiver. *See Statement of the Applicant's Mother.*

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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

- (h) The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 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 . . .

The record contains the applicant's record of conviction, indicating that he was found guilty of Battery and ordered to serve two years of probation and pay a fine. The AAO finds that the applicant's conviction renders him inadmissible as an alien convicted of a crime involving moral turpitude. The AAO thus affirms the officer in charge's finding that the applicant is inadmissible as charged under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

Having found that the applicant is inadmissible, the AAO must now determine whether the applicant is eligible for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), on the basis of a claim of hardship to his lawful permanent resident mother. The AAO finds that he is not.

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 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. The BIA has held:

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 record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother would face extreme hardship if the applicant is refused admission. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a child is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. 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 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). 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).

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's mother rises to the level of extreme. The AAO notes that the applicant's mother has been residing in the United States without the applicant for several years. The AAO recognizes that the applicant's mother would prefer to reside with her son (and daughter-in-law). The AAO also recognizes the applicant's mother's reluctance to relocate to Poland. The AAO further notes the applicant's mother claimed financial and medical circumstances, but finds that the record does not contain any documentary evidence relating to these claims. The medical conditions affecting the applicant's mother appear serious, but not uncommon or unable to be treated in Poland. The AAO also notes that the applicant's brothers reside in the United States, and in fact the applicant's mother resides with one of them. *See* Form I-601, Application for Waiver of Grounds of Inadmissibility.

Having considered the relevant factors, individually and in the aggregate, the AAO finds that the applicant has failed to establish that his mother would face extreme hardship should she remain in the United States and the waiver be denied. The AAO recognizes that separation from the applicant may cause hardship, yet there is no evidence in the record to suggest that the hardship this family would experience rises to the level of extreme. *See Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994) (stating that "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").

The AAO further finds that the applicant's mother would not face extreme hardship should she decide to relocate to Poland. In this regard, the AAO notes that the applicant's mother, as a lawful permanent resident, is not required to relocate to Poland and doing so would be a matter of choice. The AAO recognizes that relocation to Poland may result in a lower standard of living and limited opportunities. The AAO finds that such hardships are common for individuals in the applicant's circumstances and do not rise to the level of extreme. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9<sup>th</sup> Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

The AAO concludes that the hardship to the applicant's mother caused by denial of the waiver is typical for any person in her circumstances and does not rise to the level of "extreme" as required by the statute. The

AAO therefore finds that the applicant failed to establish extreme hardship to his mother as required under section 212(a)(h) of the Act, 8 U.S.C. §§ 1182(a)(h).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.