

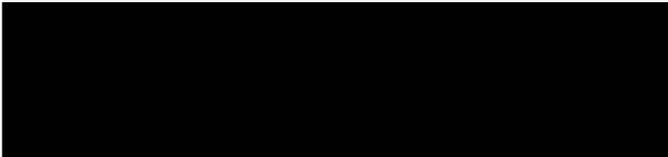
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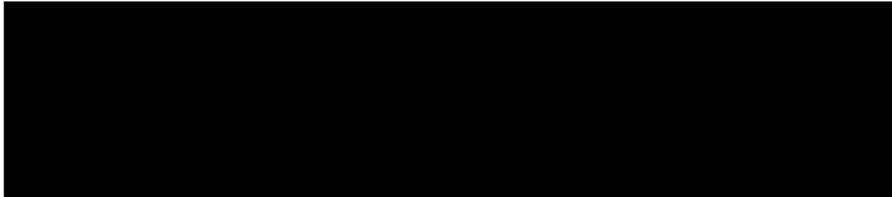


FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: JUL 16 2008

IN RE: Applicant: [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:



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 Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Officer in Charge, Frankfurt, Germany. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 denied.

The applicant is a native and citizen of Romania who was found to be inadmissible to the United States pursuant to 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 seeks a waiver of his ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The officer in charge determined the applicant had failed to establish that his U.S. citizen mother would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant indicates that he and his mother are elderly, and that his mother will suffer extreme emotional distress if she is unable to have the applicant near her for the time she has remaining. The applicant indicates that his mother will also suffer extreme physical hardship if the applicant is unable to help care for her medical needs. The applicant requests that his Form I-601 be approved accordingly.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[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.

The record reflects that on August 15, 1968, the applicant was convicted of raping a fifteen-year-old minor girl, under Articles 419 and 422 of the Romanian Penal Code. The applicant was sentenced to two years correctional jail, and three years correctional interdiction. The crime of rape has been held to be a crime involving moral turpitude. *Matter of B*, I&N Dec. 538 (BIA 1953); *see also, Matter of Z*, 7 I&N Dec. 253 (BIA 1956.) The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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) . . .

. . . .

(1) (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 reflects that the applicant's mother is a U.S. citizen. She is therefore a qualifying relative for section 212(h) waiver of inadmissibility purposes.

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In the present matter, the applicant is additionally subject to the regulation at 8 C.F.R. § 212.7(d), which governs the exercise of discretion in waiving inadmissibilities involving dangerous or violent crimes.

18 U.S.C. § 16 defines a crime of violence, in pertinent part as:

- a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. . . .

The regulation states in pertinent part at 8 C.F.R. § 212.7(d) that:

The Attorney General [Secretary], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) . . . in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in *exceptional and extremely unusual hardship*. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act. (Emphasis added.)

The record does not contain the precise statutory definition of the crime committed by the applicant. The AAO is thus unable to state that the applicant's conviction constitutes a crime of violence under 18 U.S.C. § 16(a). The AAO finds, however, that the applicant's conviction for rape of a fifteen-year-old minor girl constitutes a crime of violence as defined at 18 U.S.C. § 16(b). Accordingly, if the record establishes that the applicant's mother would suffer extreme hardship as a result of the applicant's inadmissibility to the United States, the exercise of discretion in this matter would be subject to the additional requirements at 8 C.F.R. § 212.7(d).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors that it deemed relevant in determining whether an alien has established extreme

hardship. 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship. *Id.*

The record contains the following evidence relating to the applicant's extreme hardship claim:

A sworn declaration signed by the applicant's mother [REDACTED] stating that she has lived in the United States with her son, [REDACTED], since 1984. [REDACTED] supports [REDACTED] financially, and she states that except for the applicant, all of her other children (five sons and four daughters) and their families live in the United States. Mrs. [REDACTED] states that the applicant is her oldest child, and that she has not seen him since she left Romania over twenty years ago. Mrs. [REDACTED] states that she is over 85 years old, and that the applicant is over 65 years old. It is her last wish to spend the time she has left with her oldest son near. Mrs. [REDACTED] states that she suffers from progressive depression and anxiety, and she indicates that she takes medicines for several medical ailments. Mrs. [REDACTED] states that separation from the applicant causes her anxiety, and she states that his presence in the United States would reduce her anxiety. Mrs. [REDACTED] also states that the applicant would help to take care of her in the U.S. by taking her to doctor appointments.

Sworn affidavits written by the applicant's U.S. citizen siblings, reflecting that they have all lived in the United States since the 1980s, and stating that their mother has been affected mentally and physically by her separation from the applicant.

A medical report dated August 19, 2005, signed by [REDACTED] reflecting that Mrs. [REDACTED] has been a patient since January 1999. The report indicates that [REDACTED] suffers from "depression and anxiety aggravated by some family problems (Missing her son from Romania)." The report also reflects that [REDACTED] suffers from the following medical problems for which she has been prescribed various medicines: hypertension; diabetes; atherosclerosis with parkinsonian syndrome; hyperlipidemia; gastro-esophageal reflux disease; chronic constipation; polyarthralgia and unsteady gait requiring one person assisting her all the time.

A letter signed on August 26, 2005 by psychiatrist, [REDACTED] stating that [REDACTED] suffers from severe progressive depression and anxiety, and that she requires constant family care so that she does not have to live in a residential nursing facility, where she resided in 2002. The letter indicates that [REDACTED]'s condition requires five psychiatric medications to allow her to remain at home with her family. [REDACTED] states that reuniting the applicant with his mother would result in reduced depression and suffering by [REDACTED] and he states that sometimes he believes it could also prevent [REDACTED]'s readmission to a skilled nursing facility.

The AAO finds, upon review of the evidence, that the applicant has failed to establish that his mother would suffer extreme hardship if his waiver of inadmissibility were denied and [REDACTED] remained in the United States. The AAO notes the advanced age of the applicant's mother. The AAO notes further, however, that [REDACTED] has resided separately from the applicant in the United States for over twenty years. The record reflects that all of [REDACTED] other children are in the United States, and she is not dependent on the applicant for financial or medical care. Distress from being unable to reside close to family is not the type of hardship that is considered extreme. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). Furthermore, the medical report statement that [REDACTED]'s depression and anxiety are aggravated by her missing her son in Romania, and the psychiatrist statement that reuniting the applicant and his mother would result in reduced depression and suffering, are general, and fail to demonstrate that the applicant's inadmissibility would cause [REDACTED] to suffer emotional or physical hardship beyond that normally suffered upon deportation. The affidavits from [REDACTED] and the applicant's siblings are also general and fail to establish that Mrs. [REDACTED] would suffer extreme emotional or physical hardship if the applicant were denied admission into the United States.

The applicant does not claim that his mother will suffer extreme hardship if she moved to Romania to be with the applicant, and the applicant does not otherwise address the possible consequences of his mother's relocation to Romania. The AAO therefore finds that the applicant has not established extreme hardship to his mother if she were to join him in Romania.

Having found the applicant ineligible for relief, the AAO notes no purpose in discussing whether the applicant merits a waiver as a matter of discretion under 8 C.F.R. § 212.7(d).

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed, and the Form I-601 application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.