U.S. Department of Justice

Immigration and Naturalization Service

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PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: VIENNA, AUSTRIA Date: FEB 28 2003

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)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

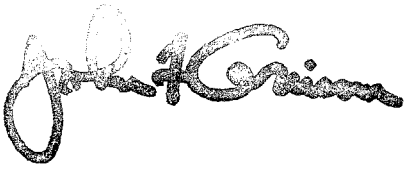
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Vienna, Austria, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland who was found by a consular officer 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 spouse and father of United States citizens and is the beneficiary of an approved petition for alien relative. He seeks a waiver of his permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to travel to the United States to reside with his spouse and child.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly.

On appeal, the applicant submits a letter asserting that his conflicts with the law in 1997 and 1998 were a consequence of his companionship with friends who exposed him to serious problems and provoked him to engage in criminal activity. He asserts that he has changed since that time and has had no problems with the law since. The applicant also asserts that he feels financially responsible for his family and wants to help them because he is currently unemployed. He states that his spouse is having problems providing for herself and their son, who has health problems and requires frequent medical appointments. No evidence to support the applicant's assertions was submitted in support of the appeal.

The record reflects that the applicant was convicted on October 4, 1997 of inflicting bodily injuries on another person by hitting the victim in the face and fracturing his nose by kicking him in the head several times. The conviction carried a suspended sentence of one year imprisonment and a fine of 150 Polish zlotys (approximately $40.00). On November 5, 1998, the applicant was convicted of breaking and entering and theft of an establishment, for which he received a suspended sentence of 14 months imprisonment and a fine of 510 Polish zlotys (approximately $115.00); and assault and battery, for which he received a suspended sentenced of one-year imprisonment and a fine.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such 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 states:

The Attorney General may, in his discretion, waive application of subparagraphs (A)(i)(I),...if-

(1)(A) in the case of any immigrant 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; and

(2) the Attorney General, 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.

> No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed a crime involving moral turpitude. Therefore, he is ineligible for consideration of a waiver provided by section 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

The record reflects that the applicant and his spouse were married in Poland in June 2001. The applicant's spouse is also a native of Poland who naturalized as a citizen of the United States in March 2001. The couple has one child together, a son born in the United States in 2001.

The record contains a statement from the applicant's spouse expressing her desire that the applicant be allowed to immigrate to the United States because their separation has caused her extreme hardship. She states that the couple's son needs his father, that unification of the family is essential to the child's upbringing, and that absence of the applicant will cause irreparable psychological damage to the child.

In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. Further, the common results of deportation are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991).

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. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994). In *Silverman v. Rogers*, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

The court 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.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude. In addition to the IIRIRA amendments, this intent is seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat. 1214, which relates to criminal aliens. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. *See Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). *See also Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's spouse or child, other than the normal social and economic disruptions involved in separation, that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to travel to the United States to reside at this time. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. *Matter of Ngai, supra*. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.