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**U.S. Department of Homeland Security**
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FL Date: JUL 15 2004

IN RE: [redacted]

PETITION: 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 PETITIONER:

[redacted]

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, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran who 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 spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his wife.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 14, 2004.

On appeal, the applicant asserts that the district director incorrectly cites the initial charges brought against the applicant instead of focusing on the charges upon which he was convicted; erroneously relies on the fact that the applicant and his spouse reside apart from one another and ignores the arguments and evidence submitted in support of the waiver application. *Form I-290B*, dated May 12, 2004.

In support of these assertions, the applicant submits a letter, dated May 12, 2004 and a copy of a letter from his criminal attorney, dated November 12, 2003. The record also contains certified copies of the criminal record of the applicant including the final court disposition; police clearance letters for the applicant from local police departments; contact information for the applicant's parole officer; an affidavit of the applicant's spouse; medical and immunization reports; copies of divorce certificates for the previous marriages of the applicant and his spouse; copies of passports issued to the applicant; letters verifying the employment of the applicant and his spouse; copies of tax and financial documents for the couple; evidence regarding the medical condition of the applicant's spouse; evidence regarding the medical condition of the mother of the applicant's spouse; letters of support; evidence of refugee status granted to the applicant's sister and copies of reports addressing country conditions in Iran. The entire record was considered in rendering a decision on the appeal.

The record reflects that on July 24, 2003, the applicant pled nolo contendre to two counts of Aggravated Assault and one count of Contributing to the Delinquency or Dependency of a Minor. The applicant was sentenced to 10 years of probation.

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 Attorney General [Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

(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 applicant asserts that the decision of the district director "incorrectly cites the arrest and initial criminal charges instead of focusing on the actual charge and criminal statute that [the applicant] plead [sic] no contest..." *Form I-290B.* The AAO notes that the decision of the district director correctly states the charges that were initially brought against the applicant and correctly reflects the charges to which the applicant pled nolo contendre. Beyond serving as the basis for his inadmissibility, the criminal record of the applicant was not considered in the decision of the district director because extreme hardship was not found and therefore, a weighing of the favorable and unfavorable factors in the application was not reached.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

*Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel contends that the applicant's spouse would suffer extreme hardship if she relocated to Iran to remain with the applicant. Counsel asserts that the immediate family members of the applicant's spouse reside in the United States and it would impose extreme hardship on the applicant's wife to be separated from them as she provides care for her ailing mother. *Beneficiary's Brief for Waiver Under INA § 212(h)(1)(B) and Response to Request for Evidence*, dated April 5, 2004. Counsel indicates that the applicant's wife has no family ties in Iran and that Iran is characterized by high unemployment and inflation rates, discrimination against women and restrictions on human rights. *Id.* at 7-8. Further, counsel states that the applicant's spouse would face difficulties in obtaining employment in Iran as she does not speak or write Arabic. *Id.* at 9-10.

The record does not establish extreme hardship imposed on the applicant's spouse if she remains in the United States maintaining her ability to provide care for her mother and avoiding the human rights abuses present in Iranian society. Counsel asserts that the applicant's wife suffers from depression and that her condition is exacerbated by the applicant's inadmissibility. *Id.* at 10-11. The applicant's spouse states that the applicant's departure from the country will worsen her health condition. *Affidavit of Elodia Rojas Memari*, dated March 31, 2004. The AAO notes that the record provides evidence of a diagnosis of depression suffered by the applicant's spouse. The record fails, however, to provide evidence of counseling, therapy or an ongoing relationship between the applicant's spouse and a mental health professional. The record does not demonstrate that the presence of the applicant is necessary to ensure the mental stability of his wife.

Further, although counsel asserts that the applicant will be unable to financially support his spouse from Iran, the record does not establish that the applicant cannot continue to provide financial support to his spouse from a location outside of the United States. *Beneficiary's Brief for Waiver Under INA § 212(h)(1)(B) and Response to Request for Evidence* at 10. Counsel offers a Department of State report to support his assertion. The AAO notes that statistics offered in country condition reports are generalized and standing alone do not support a finding of extreme financial hardship to the applicant's spouse. Furthermore, the record does not establish that the applicant's spouse is unable to obtain more lucrative employment in the event of a decrease in the applicant's income.

U.S. 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 Ninth Circuit Court of Appeals 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. Moreover, the U.S. Supreme 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion 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 and children 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 section 212(h) 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.