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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: NOV 01 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

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Athens, Greece, and is now before the Administrative Appeals Office (AAO), on appeal. The appeal will be dismissed.

The applicant is a native and citizen 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 United States citizen and the parent of a United States citizen adult daughter 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 and daughter.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and alternatively found that despite the age of the conviction, a grant of the waiver would be contrary to the national welfare and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated July 9, 2003.

On appeal, counsel contends that the applicant has provided evidence establishing the applicant's rehabilitation and that the passage of time without any trouble with the law since his deportation, and his quiet lifestyle establish that his admission would not be contrary to the national welfare, safety, or security of the United States. *Brief in Support of Appeal*, dated September 30, 2003.

In support of his assertions, counsel references the affidavit of the applicant's U.S. citizen daughter. The AAO notes that the record contains various additional documents submitted in support of the applicant's previous application for a waiver of inadmissibility which was denied by the OIC and the appeal from that decision was dismissed by the AAO on March 1, 2002. The entire record was considered in rendering a decision on the current appeal.

The record reflects that on March 24, 1987, the applicant was convicted of Conspiracy to Export Defense Articles and sentenced to eighteen months imprisonment. The applicant was subsequently placed in removal proceedings and was ordered deported from the United States to Iran on February 2, 1989. The applicant has resided in Iran since the time of his removal.

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] 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 Attorney General [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 applicant was convicted of the crime of Conspiracy to Export Defense Articles, specifically TOW Missiles and Varian Twystron Microwave Tubes on March 24, 1987, for activities which took place between October of 1986 and February of 1987. *See Conviction Documents and Transcript.* The applicant seeks the waiver of inadmissibility as a preliminary step toward pursuing admission as an immigrant. There is no indication from the Form I-601 that the applicant has as yet applied for a visa. *See* Question 8, Form I-601, March 22, 2002. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for a visa.

The AAO finds that the OIC considered the applicant's eligibility under both sections 212(h)(1)(B) and 212(h)(1)(A) of the Act finding that he had failed to establish extreme hardship for eligibility under subsection (B), and had failed to demonstrate that his admission would not be "contrary to the national welfare, safety, or security of the United States" under subsection (A).

The record reflects that the applicant meets the technical time related requirements for the subsection (A) waiver. The conviction is of a sufficient age that it qualifies him for the waiver provided that the applicant can meet the two additional requirements, i.e., that his admission to the United States would not be contrary to the national welfare, safety or security of the United States, and that he has been rehabilitated. The evidence in the record is scant and does little to address these issues. It consists, principally of an affidavit and a letter from the applicant's U.S. citizen daughter. On the issue of rehabilitation, the daughter's submissions indicate that "not a day goes by that he does not regret his past action." *See Letter from Shahrzad Rafiee*, dated May 21, 2003. The daughter's affidavit further states that the applicant has reflected upon his past acts and "gained significant insight into the error of his actions." *See Affidavit of Shahrzad Rafiee,* dated March 1, 2002.

Although the daughter's submissions assert that the applicant is remorseful and has been rehabilitated, no additional evidence has been submitted. Most significantly, nothing at all has been offered by the applicant himself or his spouse. The absence of any evidence from the applicant is a serious omission as he is obviously in the best position to demonstrate the sincerity of his remorse and relate how he has been rehabilitated, and because it is his ability to immigrate which is at stake.

In addition to establishing rehabilitation, a waiver application pursuant to subsection (A) based upon the age of the CIMT offense, must also establish that the alien's admission would not be contrary to the national welfare, safety, or security of the United States. The OIC determined that this burden had not been met as global security concerns indicated that it would not be in the national interest to grant the waiver. *See Officer In Charge's Decision* dated July 9, 2003, at p.3. The absence of any information submitted by the alien likewise requires that the AAO find that the alien has not demonstrated that the grant of the waiver request would not be contrary to the national welfare, safety, or security of the United States. The applicant was convicted of a very serious offense that by its nature posed a threat to the security of the United States. The OIC's decision correctly noted the existence of current global security concerns. For that reason, any request for a waiver by an applicant convicted of such a serious offense must be closely scrutinized. Given the nature of the offense, it is not unreasonable to expect that the applicant would provide sufficient evidence to satisfy the government's concerns about whether the applicant could pose a threat to the security of the United States. The applicant's submissions on this point, however, are clearly inadequate. Although counsel suggests that the applicant poses no risk because of his advanced age, the AAO finds such an assertion, without more to be unconvincing. The record contains no evidence of what the applicant's activities have been since the time of his removal from the United States approximately fifteen years ago. The AAO is unwilling to accept the U.S. citizen daughter's statements that the applicant has been living a quiet, unremarkable life in Iran for the reason that having seen the applicant only a few times in fifteen years, despite regular contact with him, she is not in a position to be fully aware of his activities during this time. This, coupled with the fact that no information has been provided by either the applicant or his spouse, who, has allegedly also kept in close communication with the applicant during the intervening years, or any individuals who have known the applicant during his time in Iran causes the AAO to be skeptical of any vague representations regarding the nature of the applicant's activities. The absence of evidence on this critical issue requires that CIS deny the waiver on this basis in order to ensure that no benefit is granted to someone who may potentially pose a risk to the national welfare, safety or security of the United States.

The second ground addressed by the OIC, although not specifically addressed in counsel's brief, is whether the applicant should be granted the waiver due to the extreme hardship that would befall a qualifying relative, in this case his U.S. citizen wife and daughter. Counsel asserts that in the event that the applicant is inadmissible, he has established that his U.S. citizen daughter would suffer extreme hardship.

A waiver of the bar to admission to the United States is dependent upon the alien's showing that the bar imposes an extreme hardship on a qualifying family member. Congress provided this waiver but limited its application. By this limitation, it is evident that Congress did not intend that a waiver be granted merely due to the fact that a qualifying relationship exists. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the United States citizen or permanent resident will the bar be removed. Common results of the bar, such as separation, financial difficulties, and such, in themselves are insufficient to warrant approval of an application unless combined with more extreme impacts. *See Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

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

In this case, the applicant's daughter states that the separation from her father has been terribly difficult for her mother and for her. She states that her mother has worked at up to three to four jobs in order to make ends meet. She also describes the difficulty of experiencing major milestones in her life without the presence of her father. *See Affidavit dated March 1, 2002, and Letter dated May 21, 2003 of Shahrzad Rafiee.* In addition, she asserts that her mother is now experiencing medical difficulties, and implies that she would be aided by the presence of the applicant in the United States.

U.S. court decisions have repeatedly held, however, 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.

In this case, the applicant has failed to establish that the stress of separation that his daughter and wife experience is other than a normal consequence of exclusion or deportation. He has also submitted no evidence to support the assertion that his presence in the United States is necessary for his spouse's financial or physical well being. If anything, the situation would indicate that the applicant's spouse has managed well without him, having supported herself and her daughter for an extended period of time and putting her daughter through college and medical school in the applicant's absence.

A review of the record, when considered in its totality, reflects that the applicant has failed to show that his daughter or wife would suffer extreme hardship if his waiver of inadmissibility application were denied. Having found the applicant ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) 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.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.