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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VIENNA, AUSTRIA Date: NOV 04 2004

IN RE: [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:

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, Director
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of the Former Republic of Yugoslavia (Serbia) 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 two crimes involving moral turpitude. The record indicates that the applicant's wife and children obtained lawful permanent residence status through the Diversity Immigrant Program, DV2003, and that the applicant was denied an immigrant visa on account of his two prior convictions. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his wife and children in the United States.

The Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his lawful permanent resident spouse and children. The application was denied accordingly.

On appeal, the applicant submits a letter in which he states in the second paragraph that he does not deny having committed two burglaries in January and March 1993. In the fifth paragraph of his letter, however, the applicant states that he was beaten in order to force him to accept responsibility for burglaries he had never committed. In support of the latter claim, the applicant submits a copy of a certificate issued by the Serbian Ministry of Interior Affairs stating, "according to the available data from the penalty record [the applicant] has not been sentenced." This document is inconsistent with court records contained in the record that show that the applicant was convicted of two crimes of burglary and was sentenced to six months in jail.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has provided no explanation for his seemingly contradictory statements and the inconsistent documents. The AAO will, thus, confine its examination of the evidence to the documentation contained in the record prior to the applicant's submission of the inconsistent certificate on appeal.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

A crime involves moral turpitude where knowing or intentional conduct is an element of the offense. *Matter of Perez-Contreras,* 20 I&N Dec. 615, 618 (BIA 1992). In this case, the record indicates that the applicant was convicted of two separate crimes of burglary, which includes the element of criminal intent.

Section 212(h) states in pertinent part that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he 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.

The applicant's convictions for burglary occurred on November 14 and 21, 1996, and his petition for alien relative was filed June of 2003, less than 15 years after his conviction. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

On appeal, the applicant writes that he was forced to commit burglary in order to feed his children. He also states that he confessed due to force, and that he was sentenced by dishonest judges. Such assertions carry no weight in these proceedings. "[C]ollateral attacks upon an [applicant's] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned." *In Re Max Alejandro Madrigal-Calvo,* 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted.) Moreover, this office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See id.*

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

On appeal, the applicant makes no statements regarding the infliction of extreme hardship on his qualifying relatives. The record reflects, however, that his wife stated that she and the children, who moved to the United States in 2003, experience emotional and financial hardship due to their separation from the applicant. She also asserted that she needs her husband to help her due to her health problems caused by a hemorroidectomy. She submitted an untranslated document that appears to indicate that she underwent a

hemorroidectomy. The record, however, contains no evidence regarding the applicant's and his wife's current health status or financial and employment situation.

U.S. court decisions have additionally 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that 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. Moreover, the U.S. Supreme Court additionally 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 wife and children experience is other than a normal consequence of exclusion or deportation. A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his lawful permanent resident spouse and children would suffer hardship that was unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily 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(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.