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U.S. Citizenship and Immigration Services

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JAN 31 2005

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[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 Interim District Director, Los Angeles, California. 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 Australia who entered the United States and was admitted as a visitor in 1991. The applicant was found to be inadmissible to the United States pursuant to § 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 in 1996 of a crime involving moral turpitude (forgery of government financial instruments and possession of a counterfeit drivers license). The record indicates that the applicant is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with her husband in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. On appeal, counsel asserts that the government equated the amount of stress suffered by the applicant's husband with stress due to arriving late to work. Counsel asserts that because the applicant's husband is taking medication for depression, Citizenship and Immigration Services (CIS) must necessarily determine that he is undergoing extreme hardship. Additional documentation submitted on appeal consists of three statements by the applicant's mother in law and two stepchildren.

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.

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 was convicted of forgery in 1996, which was less than 15 years ago. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. She is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

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.

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.

The record contains a letter written on August 1, 2003 by Dr. [redacted] Ph.D., a psychologist who stated that the applicant's husband was under his care. The record does not indicate the length of Dr. [redacted] relationship with the applicant's husband or whether the applicant's husband suffered any psychological disorders prior to the development of the applicant's immigration difficulties. Dr. [redacted] wrote that the applicant's husband was taking three medications for depression, anxiety, and insomnia. Dr. [redacted] also stated that he believed that the applicant's immigration situation was the cause of the applicant's husband's psychological problems. The AAO has considered this evidence, as well as all the submitted statements referring to the applicant's husband's emotional state, and the AAO concurs with the interim district director's determination in this regard.

The interim district director did not imply that the applicant's husband's stress was minor or insignificant. CIS acknowledges that separation from family members is painful and difficult and usually causes emotional suffering. In fact, the applicant's husband's depression does not constitute an extreme reaction to the applicant's possible removal. There is no evidence on the record that the applicant's husband's emotional state, symptoms, or physical consequences, while unfortunate, could be considered abnormal under the

circumstances. The record also does not contain evidence that the applicant's husband's symptoms placed him at risk of self-harm or harm to others or that they caused him to be unable to function.

The record does not establish that the applicant's husband would suffer extreme hardship if he chooses to relocate to Australia to accompany her. Statements on the record indicate that the applicant's husband might be separated from his two children should he move to Australia; however, the record contains no statements from the children's mothers to the effect that the children would not be allowed to travel to Australia. The AAO cannot, therefore, determine the duration or frequency of any such separation. In addition, separation from family members is not an unusual or extraordinary consequence of an individual's removal. There is no evidence on the record that the situation presents ramifications beyond that which are normally encountered.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse 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.