

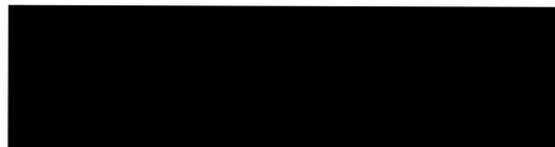
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U.S. Department of Homeland Security
20 Massachusetts Ave., Rm. A3042
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U.S. Citizenship
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Services

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FILE:



Office: CHICAGO, IL

Date: **MAY 11 2006**

IN RE:



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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, IL and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of China who entered the United States on December 26, 1996. The applicant 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 married a United States citizen and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), to remain in the United States with his spouse.

The district director concluded that the circumstances surrounding the applicant's application do not rise to the level of extreme hardship. The application was denied accordingly. *District Director's Decision*, dated October 22, 2004.

On appeal, counsel states that the district director erred in his decision that the applicant's spouse would not suffer extreme hardship as a result of the applicant's removal from the United States.

The record indicates that on February 25, 1999 the applicant was convicted of felony retail theft and sentenced to eighteen months probation.

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

- (A)(i) Except as provided in clause (ii), any 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) of the Act provides, in part, that: - The Attorney General may, in his discretion, waive the application of subparagraph (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 . . .

(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 for adjustment of status No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

In the applicant's case, fewer than 15 years have elapsed since the applicant committed that acts which led to his February 25, 1999 conviction. Therefore, the applicant is ineligible for the waiver provided by section 212(h)(1)(A) of the Act. However, the applicant is eligible for a waiver under section 212(h)(1)(B) of the Act.

The record includes, but is not limited to: a statement from the applicant; a statement from the U.S citizen spouse; a letter from [REDACTED] of the Chicago Chinese Baptist Church; a letter from [REDACTED] the applicant's employer; a letter from [REDACTED] a letter from the applicant's brother and sister-in-law; medical reports for the applicant's spouse; medical bills for the applicant's spouse; a doctor's sick leave confirmation for the applicant's spouse; reports on mental health care in China; photographs of the family; a psychologist report for the applicant's spouse by [REDACTED]; a clinical evaluation of the couple by a certified social worker, [REDACTED] and a letter from the applicant's spouse's treating psychiatrist, [REDACTED]

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 relative. Extreme hardship the alien himself experiences 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 key term in the waiver provision is "extreme". 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). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in China or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in China. The applicant asserts that she will suffer extreme hardship as a result of relocating to China. As evidenced by [REDACTED] and [REDACTED] reports the applicant's spouse suffers from posttraumatic stress disorder as a result of an elevator fall in 1992. The applicant's spouse was the victim of

an elevator accident where she fell 10 floors, severely injuring her back. She has been visiting a psychologist on a weekly basis since 1998 for her symptoms relating to posttraumatic stress. The applicant asserts that relocating to China is impossible for her because she will not be able to obtain the same mental health care she does in the United States. The applicant submitted several reports regarding the status of mental health care in China and establishing that the Chinese perception of mental illnesses is very negative. In addition, in the evaluation submitted by [REDACTED], he states, "a symptom of her posttraumatic stress which Jane already manifests is an intense fear of new places and experiences. Currently, [REDACTED] has difficulty meeting a friend in a new or unfamiliar neighborhood-she certainly could not cope with the magnitude of multi-stressors inherent to a move to China." Her doctor goes on to state that the separation from family members in the United States is particularly dangerous for the applicant's spouse because she is already emotionally vulnerable. The applicant's spouse also asserts that she would not be able to find work as a librarian in China as she does not speak Chinese and that she would not be afforded the same freedoms as in the United States because China is a communist country. Taking into consideration the applicant's spouse's fragile mental condition as well as the issues concerning employment barriers it is clear that the applicant's spouse would suffer extreme hardship as a result of relocating to China.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Again, the applicant's spouse asserts that she needs her husband's love and support in dealing with her posttraumatic stress as well as everyday housework due to her back injury. She states that the applicant helps with the cooking, cleaning and general housework because her back injury makes it very painful to do any of these tasks. The spouse's treating psychiatrist, [REDACTED] states in her letter that the spouse's posttraumatic stress symptoms have worsened as a result of her husband's immigration difficulties. The applicant's spouse also states that she will suffer financially if the applicant is removed from the United States because she needs his income to help pay her medical bills which are about \$10,000-\$20,000. Because of the applicant's physical and mental health difficulties she would be unable to maintain her wellbeing if the applicant was removed from the United States.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (Board) refers to *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), where the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship. A review of the record reflects strong evidence showing that the applicant's U.S. citizen spouse would suffer extreme hardship if the applicant was removed to China.

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 Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The unfavorable factor in this matter is the applicant's criminal conviction for felony retail theft. The favorable factors in this matter are the extreme hardship to the applicant's spouse, the passage of more than seven years since the applicant's criminal conviction, and the three letters submitted by various members of the community attesting to the applicant's rehabilitation. The AAO finds that the favorable factors outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the waiver application is approved.