U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

H2

[redacted]

NOV 26 2007

FILE: Office: FRANKFURT, GERMANY Date:

IN RE: Applicant: [redacted]

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

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-In-Charge (OIC), Frankfurt, Germany. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant's husband requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed January 23, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. Therefore, the record must be considered complete.

The record reflects that the applicant is a native and citizen of Poland 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), as an alien convicted of a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for failing to disclose her criminal records when applying for entry into the United States. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen spouse.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Officer In Charge Decision*, dated December 22, 2005.

On appeal, the applicant's husband states the applicant's criminal charge was dismissed. *Form I-290B, supra.* Additionally, the applicant's husband claims the applicant disclosed her arrest and conviction to the consular officer. *Id.*

The record includes, but is not limited to, the applicant's Mexican marriage certificate, statements from the applicant and her husband, and court dispositions for the applicant's arrest and conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was arrested for grand theft in the third degree in May 2001. She participated in a Pretrial Diversion Program and successfully completed it on September 30, 2003.

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

> (A) *Conviction of certain crimes.*—
>
> > (i) In general.—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...

Section 212(h) of the Act provides, in pertinent part, that:

> (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the [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 established to the satisfaction of the [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...
>
> (2) the [Secretary], 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 adjustment of status.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> ...
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present application, the record indicates that the applicant initially entered the United States on a J-1 nonimmigrant visa on June 8, 2000. The applicant departed the United States in September or October 2000. On February 26, 2002, the applicant reentered the United States on a J-1 nonimmigrant visa. Sometime in May 2001, the applicant was arrested in Orange County, Florida, for grand theft in the third degree, and she was placed into a Pretrial Diversion Program. In August or September 2003, the applicant departed the United States. On September 30, 2003, the applicant completed the Pretrial Diversion Program. On October 22, 2003, the criminal charge was dismissed against the applicant. On March 1, 2004, the applicant married [redacted]., a United States citizen, in Mexico. On April 16, 2004, the applicant's husband filed a Form I-130 on behalf of the applicant, which was approved on August 2, 2004. On December 9, 2004, the applicant's husband filed a Petition for Alien Fiancée (Form I-129F) on behalf of the applicant, which was approved on the same day. On February 8, 2005, the applicant filed an Application for Immigrant Visa and Alien Registration (DS-230) and stated she was convicted of theft, the case was discharged, and she had never been convicted of a crime involving moral turpitude. On August 17, 2005, the applicant filed a Form I-601. On December 22, 2005, the OIC denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(h) and section 212(i) waiver of the bar to admission resulting from violations of sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant, while a waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is irrelevant to sections 212(h) and 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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).

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 has established extreme

hardship to a qualifying relative. The 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.

The applicant's husband states the applicant's criminal charge was dismissed. *Form I-290B*, *supra*. The AAO notes that the applicant successfully completed her Pretrial Diversion Program and the theft charge was dismissed; however, she has still been convicted of a crime for immigration purposes. Section 101(a)(48) of the Act states that when an alien enters a plea of guilty, or is found guilty, and a formal judgment of guilt is entered by a court, where a judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, there has been a conviction for immigration purposes. In order to participate in the Pretrial Diversion Program, the applicant had to voluntarily agree to such program and knowingly and intelligently waive her right to a speedy trial for the period of her diversion. *See Florida Statutes § 948.08*. Participation in the Pretrial Diversion Program is a restraint on the applicant's liberty. The applicant is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant's husband states that since the day the applicant was "denied entry back into the United States, [his] life has been in turmoil. [He misses the applicant] so much that [he has] difficulty sleeping and have [sic] depression on a daily basis. [He has] no desire to live for tomorrow, [his] life is not the same without [the applicant] in [his] life. [He does not] want to wake up in the morning for work, [his] productivity as a supervisor decreased and [his] job is in jeopardy. [He] can not concentrate at work. [He does not] have the energy and enthusiasm and a jest for life that [he] once had. [His] personal life has suffered as well. [He is] withdrawn and [has] become reclusive." *Letter from* [redacted], filed February 10, 2006. The AAO notes that there are no professional evaluations for the AAO to review to determine how the applicant's husband's mental, emotional, and/or psychological health has been affected by the applicant's immigration status. The AAO notes that since the applicant's husband's depression is primarily caused by the separation from the applicant, if the applicant's husband joins the applicant in Poland then the depression would presumably no longer be an issue. Additionally, the AAO notes that the applicant's husband made no claim that he could not join the applicant in Poland, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Poland. Additionally, the applicant failed to demonstrate whether or not she has any family ties in Poland. The applicant claims that she suffers from nightmares and cries herself to sleep every night because of the guilt she feels about her arrest. *Letter from the applicant*, dated February 7, 2006. As stated above, hardship the alien herself experiences upon removal is irrelevant to section 212(h) and section 212(i) waiver proceedings. The applicant would like to return to the United States to be with her husband. *Id.* The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Poland.

In addition, the applicant fails to establish extreme hardship to her spouse if he remains in the United States. The AAO notes that the applicant and her husband have never lived together and it has not been established

that her husband cannot provide for his daily needs without her. There was no documentation submitted establishing that the applicant's husband will experience financial hardship as a result of the separation from the applicant. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

United States 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 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of removal 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 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(2)(A) and 212(a)(6)(C) 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.