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U. S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHILADELPHIA Date: MAY 13 2010

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Bulgaria, was found 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 committed the essential elements of a crime involving moral turpitude. Specifically, the district director found that the applicant had used a fraudulent Form I-551, Temporary Evidence of Lawful Admission for Permanent Residence, to obtain a social security number for the purposes of working in the United States. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated January 9, 2007.

On appeal, counsel for the applicant submits a brief, dated March 28, 2007, and referenced exhibits, including but not limited to, a DVD. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part:

> [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) of the Act provides, in pertinent part:

> The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . .
>
> (1) (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 . . .

With respect to the district director's finding that the applicant is inadmissible under 212(a)(2)(A)(i)(I) of the Act, for having committed the essential elements of a crime involving moral turpitude by using a fraudulent Form I-551 stamp to obtain a social security number, the AAO notes that in order for the admission of acts which constitute the essential elements of a crime to be properly used as a basis for inadmissibility, three conditions must be met, including: 1) the admitted acts must constitute the essential elements of a crime in the jurisdiction in which they occurred; 2) the respondent must have been provided with the definition and essential elements of the crime prior to making the admission, and; 3) the admission must have been voluntary. *Matter of K-*, 7 I&N Dec. 594, 596-98 (BIA 1957).

Upon review, the record does not reflect that the applicant was provided with the essential elements of the criminal law which he allegedly admitted to violating. The AAO has reviewed all evidence in the record. No references were made to the criminal code or statute with respect to the applicant's admitted crime. The record does not show that the applicant was provided the essential elements of any criminal law prior to his admission that he had used a fraudulent Form I-551 stamp to obtain a social security number for the purposes of working in the United States.

The AAO recognizes the burden on an interviewing officer due to the requirement to cite the elements of specific criminal law in an adjustment interview, particularly given the great range of topics or criminal conduct that may arise in the course of the discussion. However, finding an applicant inadmissible based on criminal conduct in the absence of a conviction in a court of law is a very serious matter. Where an applicant has not been afforded a criminal trial with respect to his conduct, or where he may not have the opportunity to be represented by counsel experienced in criminal matters, the decision of the BIA in *Matter of K-* sets a minimum requirement that such applicant is informed of the elements of the criminal law or laws which he has allegedly transgressed prior to taking an admission and using that admission as a basis for inadmissibility. *Matter of K-*, 7 I&N Dec. 594, 596-98 (BIA 1957). As the record does not reflect that any essential elements of a crime were discussed with the applicant prior to his purported admission, the record does not establish that his admission may be used as a basis for inadmissibility.

Based on the foregoing, the AAO finds that the applicant's admission to having used a fraudulent Form I-551 stamp to obtain a social security number for the purposes of working in the United States does not constitute the admission of committing acts which constitute the essential elements of a crime, as contemplated by section 212(a)(2)(i)(I) of the Act, due to the fact that the criteria for admissions provided by the BIA in *Matter of K-* were not met. *Matter of K-*, 7 I&N Dec. 594, 596-98 (BIA 1957). Accordingly, the AAO finds that that the applicant is not inadmissible under section 212(a)(2)(i)(I) of the Act for using a fraudulent Form I-551 stamp to obtain a social security number for the purposes of working in the United States.

Nevertheless, the applicant remains inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude, specificially, Retail Theft, a violation of section 3929 of the Pennsylvania Consolidated Statutes (PCS), a misdemeanor of the first degree, as determined by the value of the merchandise stolen, punishable, as noted in section 106 of the PCS, by a maximum of five years imprisonment. Pursuant to the record, the applicant stole merchandise

valuing $202 from [redacted] on June 2, 2002. *Camp Hill Police Department Probable Cause Affidavit,* dated June 3, 2002 and *Criminal Complaint and Probable Cause Affidavit,* dated June 3, 2002. Section 101(a)(48) of the INA states the following:

> (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or if adjudication of guilt has been withheld, where—
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> (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or had admitted sufficient facts to warrant a finding of guilt, and
>
> (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The record establishes that based on his retail theft offense in June 2002, the applicant was required to remain under the Accelerated Rehabilitative Disposition (ARD) Program and subject to the administrative supervision of the Cumberland County District Attorney's Office for a period of 6 months, was ordered to pay an ARD fee and costs, had to successfully complete community service and counseling, and was required to submit to urine tests. *Order and Conditions Accelerated Rehabilitative Disposition,* dated May 29, 2003. As such, the AAO concludes that the applicant was convicted of retail theft in May 2003, as outlined in section 101(a)(48)(A) of the Act, based on a June 2002 offense. The AAO has reviewed the statutes, case law and other documents related to this conviction, as well as the relevant precedent decisions from the Board of Immigration Appeals and the courts. The AAO concludes that the applicant has been convicted of a crime involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

The applicant must first establish that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant relocated abroad due to his inadmissibility. With respect to this criteria, the applicant's spouse contends that she will suffer emotional and financial hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration she states that she was abandoned by her mother temporarily, and has been in abusive relationships in the past, but since meeting the applicant, she has been able

to work through her deep rooted fears of abandonment and negative self-worth. Past professional counseling, she notes, has not enabled her to shed the problems of her past as powerfully as her relationship with the applicant. She asserts that the applicant has taught her to love herself. She fears that losing him would lead to further damaging relationships and emotional instability. *Letter from* [redacted] dated February 9, 2007. She further contends that she is dependent on her spouse's income, and outlines the numerous expenses to which she and her husband are responsible, including dental work for her, fertility treatments if they are unable to become pregnant, mortgage, car payments, living costs, legal expenses and existing credit card balances. *Supplemental Evidence Supporting* [redacted] *Financial Hardship.*

It has not been established that the applicant's spouse would encounter extreme emotional hardship were she to remain in the United States while the applicant resides abroad. Although she notes that she has received professional counseling in the past, no objective documentation has been provided confirming her current mental health condition, the short and long-term treatment plans, the gravity of the situation, and what specific hardships she will face were the applicant to relocate abroad due to his inadmissibility. Nor has any documentation been provided by counsel to establish that the applicant's spouse would be unable to travel to Bulgaria regularly to visit her spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Finally, while the AAO sympathizes with the applicant and her spouse regarding their infertility problems, all couples separated by removal have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of extreme hardship.

As for the financial hardship referenced by the applicant's spouse, it has not been established that the applicant's spouse would experience extreme financial hardship were her spouse to relocate abroad due to his inadmissibility. The record establishes that the applicant's spouse, a commercial real estate appraiser, earns a base salary of $40,000 and is eligible for quarterly commission based on production which may equate to an annual income of $50,000 to $70,000. *Letter from* [redacted] *Mid-Atlantic Appraisals,* dated May 25, 2006. It has not been established that the applicant's spouse's sole income, well above the poverty guidelines for 2009, would cause the applicant's spouse extreme financial hardship. In addition, counsel has failed to establish that the applicant would be unable to obtain gainful employment in Bulgaria, thereby affording him the opportunity to assist with the family's finances should the need arise. While the applicant's spouse may need to make adjustments with respect to her emotional and financial care while the applicant relocates abroad due to his inadmissibility, it has not been established that such adjustments would cause the applicant's spouse extreme hardship.

Although the depth of concern over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the

availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will suffer extreme emotional and/or financial hardship due to the applicant's inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's U.S. citizen spouse asserts that she would suffer emotional hardship, as she is unfamiliar with the language, culture and customs of Bulgaria. In addition, she notes that she would not be able to continue her career as a real estate appraiser based on the language impediment and the lack of jobs for non-Bulgarian citizens in Bulgaria. *Oral Declaration from* [redacted] *from DVD.* Moreover, the applicant's spouse contends that she is currently in the midst of obtaining her appraisal designation known as the MAI designation and she has committed herself as the education and audit chairman of her local Appraisal Institute Chapter and were she to relocate abroad, she would encounter professional and career disruption. *Letter from* [redacted] dated June 2, 2006. Finally, the DVD provided by counsel references the problematic country conditions, including environmental concerns, substandard health care, crime and corruption and lack of employment opportunities.

A citizen of the United States by birth, the applicant's spouse has no ties to Bulgaria beyond those of the applicant, nor does she speak that country's language. She would be forced to relocate to a country to which she is not familiar. She would have to leave her support network of family, including her parents and sibling, her friends, her community and her long-term gainful employment as a commercial real estate appraiser. In addition, she would not be able to maintain her quality of living based on her inability to obtain employment due to the language barrier and her current job skills and knowledge, which are specific to commercial real estate in the United States. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that his U.S. citizen spouse would experience extreme hardship were she to relocate to Bulgaria with the applicant, it has not been established that the applicant's U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant relocated abroad due to his inadmissibility. The record demonstrates that the applicant's spouse face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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, 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. The waiver application is denied.