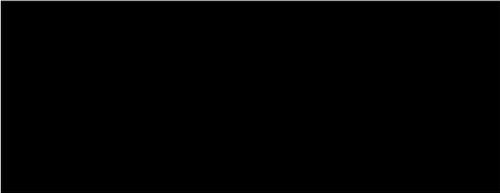




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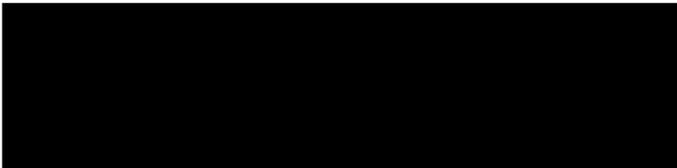
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), and; section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is a native and citizen of Thailand who was found to be inadmissible to the United States for the following reasons: 1.) under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation; 2.) under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States, and; 3.) under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude (prostitution.) The applicant seeks waivers of inadmissibility in order to enter the United States and reside with her U.S. citizen husband and child.

The acting district director concluded that the applicant 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 Acting District Director*, dated December 16, 2004.

On appeal, counsel for the applicant contends that the alleged grounds of inadmissibility do not apply to the applicant, and thus she does not require a waiver. *Brief from Counsel*, submitted February 17, 2005. Counsel further asserts that the applicant's husband will suffer extreme hardship if the applicant is prohibited from entering the United States. *Id.*

#### Evidence

The record contains briefs and statements from counsel in support of the appeal and Form I-601 application; documentation from the U.S. Embassy in Bangkok regarding the applicant's visa application; a copy of the applicant's marriage certificate; a copy of the applicant's son's Consular Report of Birth Abroad of a Citizen of the United States of America; documentation regarding the applicant's arrest, including a sworn statement she provided to immigration officers; a report from a psychiatrist regarding the applicant's husband's mental health; statements from the applicant, the applicant's husband, and the applicant's mother-in-law; copies of photographs of the applicant with her husband and child; a copy of the applicant's son's U.S. passport and birth certificate; a copy of the applicant's mother-in-law's passport; copies of documentation relating to the applicant's husband's engineering career and business activities; documentation of the applicant's mother-in-law's physical disability; information on the engineering profession in Thailand; copies of medical bills for the applicant's pregnancy in Thailand; a summary of the monthly expenses of the applicant's husband and mother-in-law; copies of the applicant's husband's tax, pay, and financial documentation; copies of bills for the applicant's husband; evidence of the applicant's mother-in-law's mortgage; reports on conditions in Thailand; copies of records in connection with the applicant's prior application for asylum and associated immigration court proceedings, and; a copy of a letter from the U.S. Embassy in Bangkok denying the applicant's application for an immigrant visa. The entire record was reviewed and considered in rendering this decision.

#### Applicable Law

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

- (i) 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.

Section 212(i) of the Act provides that:

- (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 alien 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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

**(B) Aliens Unlawfully Present.-**

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

- (iii) Exceptions –

- (II) Asylees. No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

....

- (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(2)(D)(i) of the Act states in pertinent part that:

(D) Prostitution and commercialized vice.-Any alien who-

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status [is inadmissible].

....

(F) Waiver authorized.- For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

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

(A)(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) [or] . . . (D) of subsection (a)(2) . . . if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i). . . of such subsection . . . 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 . . . .

### Grounds of Inadmissibility

The applicant testified that she entered the United States in April 1994 using a fraudulent passport and B-2 visa under the name Sudruthai Makhaphan. *Record of Sworn Statement*, dated January 18, 1996. She stated that she entered the United States to engage in prostitution. *Id.*

The record contains inconsistent statements from the applicant regarding the conditions that led to her employment as a prostitute, or her willingness to enter the United States. The applicant has maintained in her application for asylum, her application for special immigrant status under the Violence Against Women Act, and her application for a waiver of inadmissibility that she was sold into prostitution by her mother at a young age, she was transported to the United States against her will for the purpose of forcing her to engage in prostitution, she escaped her captors in July 1994, and she never engaged in prostitution thereafter. However, upon her arrest by immigration authorities in January 1996, the applicant provided a detailed sworn statement in which she testified that she came to the United States willingly, as "a friend of a friend" talked her into coming to the United States to be a prostitute, and the applicant paid \$30,000 to a man to arrange for her transportation to the United States. *Record of Sworn Statement* at 3. At the time of her arrest, the applicant further stated that she first worked as a prostitute in Los Angeles, for which she received 70 percent of the income she earned, yet she left the location where she was working and later assumed employment as a prostitute at a separate location in San Francisco in April 1995. *Id.* at 3-4. She provided that she paid the owner of the establishment in San Francisco \$10,000, yet she left because she did not want to pay more funds to him. *Id.* at 4.

Based on the foregoing, the district director found that the applicant's assertions that she was transported to the United States and forced to engage in prostitution against her will were not credible. Accordingly, the district director determined that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by fraud or willful misrepresentation, and under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude (prostitution.) The director further determined that, as the applicant remained in the United States for a lengthy period without a legal immigration status, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. On appeal, the applicant contests all grounds for which she has been deemed inadmissible.

### Unlawful Presence

Upon review, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The record reflects that the applicant filed a Form I-589 application for asylum in January 1997. Her case was referred to an Immigration Court. While the Immigration Judge found the applicant to be credible, he determined that she did not meet the requirements for asylum and denied her application on May 9, 1997. The applicant filed a timely appeal before the Board of Immigration Appeals (BIA), yet the appeal was denied on May 3, 2002. The BIA granted the applicant voluntary departure, and she exited the United States in June 2002.

For the purpose of determining inadmissibility under section 212(a)(9)(B)(i) of the Act, unlawful presence does not accrue before April 1, 1997, the date the unlawful presence provisions were enacted. As the

applicant filed a Form I-589 application for asylum prior to April 1, 1997, she did not accrue unlawful presence before her application was filed. The applicant's asylum claim was viable until the BIA denied her appeal on May 3, 2002, and she departed the United States under an order of voluntary departure approximately one month later. Thus, from April 1, 1997 until May 3, 2002, the applicant had a pending bona fide application for asylum. The record does not reflect that the applicant worked during this period, as she was married and was supported by her husbands. Thus, this period of time meets the exception for unlawful presence under section 212(a)(9)(B)(iii)(II) of the Act. The applicant did not accrue unlawful presence during the month that she was under an active voluntary departure order, from May 3, 2002 until she departed the United States. Based on the foregoing, the applicant is not inadmissible under section 212(a)(9)(B)(i) of the Act, and she does not require a waiver pursuant to section 212(a)(9)(B)(v).

#### Fraud or Misrepresentation

The applicant asserts that, while she entered the United States using fraudulent documentation, she did not do so willingly. She contends that she was under the control of a prostitution ring against her will, suggesting that she would not have come to the United States or committed fraud or misrepresentation but for this coercion. Counsel asserts that this fact reflects that the applicant did not possess the required intent to render her inadmissible under section 212(a)(6)(C) of the Act, as she did not willfully commit fraud or misrepresentation. *Brief from Counsel* at 7-8.

However, as discussed above, the applicant made statements upon her arrest that conflict with her present assertion that she came to the United States against her will. *Record of Sworn Statement* at 3. The sworn statement that the applicant provided on January 18, 1996 was detailed and contained her answers to numerous questions that addressed the purpose and circumstances of her entry to the United States. *Id.* The applicant described her willing payment to an individual in order to arrange travel to the United States and work as a prostitute. *Id.* at 2. She further stated that she was aware that she was using the passport and visa of another individual in order to gain admission to the United States. *Id.* at 3. The AAO has examined this four-page statement carefully and compared it to other statements from the applicant in the record. Due to the detailed and lengthy nature of the document, it cannot be concluded that its content was significantly affected by errors in translation or the applicant's misunderstanding of the numerous questions presented, such that it could be reasonably reconciled with the applicant's present assertions. Thus, the sworn statement of January 18, 1996 calls into question the veracity of the applicant's assertions in the present proceeding. Accordingly, the applicant has not established that she entered the United States using fraudulent documents against her will. Therefore, she requires a waiver under section 212(i) of the Act.

#### Prostitution

The applicant asserts that she did not willfully engage in prostitution. The applicant further contends that she did not engage in prostitution after she fled from her captors in July 1994. Based on this contention, counsel asserts that the applicant is not inadmissible under section 212(a)(2)(D)(i) of the Act, as the applicant's participation in prostitution occurred more than ten years prior to her application for an immigrant visa in Bangkok. *Brief from Counsel* at 4-5. However, as discussed above, the applicant provided sworn testimony upon her arrest that she departed her first location of prostitution in Los Angeles, and then she began working for another establishment as a prostitute in San Francisco in April 1995. *Record of Sworn Statement* at 4. As the applicant's immigrant visa application was denied by the U.S. Embassy in Bangkok on August 7, 2004, approximately nine years and three months after the applicant worked as a prostitute in San Francisco, it is

evident that her visa application was filed less than ten years after she ceased engaging in prostitution. According, section 212(a)(2)(D)(i) of the Act applies and the applicant requires a waiver of inadmissibility under section 212(h) of the Act.

It is noted that, as the applicant is inadmissible under both sections 212(a)(2)(D)(i) and 212(a)(6)(C) of the Act, she is not eligible for consideration for a waiver under the lesser standard of section 212(h)(1)(A)(i) of the Act.

#### Crime Involving Moral Turpitude

The district director found that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude, yet the district director did not indicate that the applicant is inadmissible under section 212(a)(2)(D)(i) of the Act. The only activity of which the applicant has been accused that constitutes a crime is her engagement in prostitution. Thus, rather than applying section 212(a)(2)(D)(i) of the Act to the applicant's activity, the district director designated her acts of prostitution as a crime involving moral turpitude.

As cited above, section 212(a)(2)(D)(i) of the Act specifically addresses inadmissibility of those who have engaged in prostitution. Section 212(a)(2)(D)(i) of the Act treats prostitution differently from general crimes involving moral turpitude, as it affords an applicant the opportunity to be considered for a waiver under a lesser discretionary standard if the applicant is only inadmissible based on the single ground of prostitution. Section 212(h)(1)(A)(i) of the Act. Section 212(a)(2)(A)(i)(I) of the Act, which renders individuals inadmissible for having committed a crime involving moral turpitude, only affords an applicant an opportunity for a waiver pursuant to section 212(h) of the Act, which involves a greater standard than section 212(h)(1)(A)(i) of the Act due to the requirement to show that a qualifying relative will experience extreme hardship. Section 212(h)(1)(B) of the Act. Accordingly, it could not have been Congresses intent to have acts of prostitution considered crimes involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act, as such a treatment would effectively eliminate the purpose of section 212(a)(2)(D)(i) of the Act, and it would foreclose the availability of the lesser discretionary standard of section 212(h)(1)(A)(i) of the Act for those who are inadmissible based solely on acts of prostitution. Accordingly, the AAO finds that the applicant is not inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

#### Standard for Waivers

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 applicant or her son experience due to denial of the waiver is irrelevant to section 212(i) waiver proceedings; the only relevant hardship regarding the applicant's request for a waiver under section 212(a)(6)(C) of the Act is hardship suffered by the applicant's husband. 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).

As noted above, regarding her acts of prostitution, the applicant is not eligible for an exercise of discretion pursuant to section 212(h)(1)(A)(i) because she is inadmissible under another ground of inadmissibility. The applicant is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B).

Section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship the applicant herself experiences due to her inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship regarding the applicant's request for a waiver under section 212(h)(1)(B) of the Act is hardship suffered by the applicant's husband and son. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h)(1)(B) of the Act.

The applicant is seeking waivers of inadmissibility under sections 212(h)(1)(B) and 212(i)(1) of the Act. As noted above, while hardship to the applicant's son may be properly considered in section 212(h)(1)(B) waiver proceedings, hardship to the applicant's son is not relevant in section 212(i)(1) waiver proceedings. The applicant must obtain a waiver for all grounds of inadmissibility to which she is subject in order to remain in the United States. Thus, in order to remain in the United States, the applicant must meet the standard of section 212(i)(1) of the Act by showing that her husband will suffer extreme hardship, irrespective of hardship experienced by her son.

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.

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

#### Facts Regarding Hardship to Qualifying Family Members

The applicant's husband explained that his separation from the applicant is causing him to be lonely and depressed, and he intends to relocate to Thailand if the applicant's waiver application is denied. *Statement from Applicant's Husband*, dated October 21, 2004. He indicated that he cannot raise his son alone, and he wishes for his son to grow up in a household with two parents. *Id.* at 2. The applicant's husband stated that his own father left when he was four years old, and he seldom saw him afterwards, thus he is determined to keep his own immediate family together. *Id.* at 2-3. He noted that his brother abandoned the family household, and thus his only close family now is his mother, the applicant, and his son. *Id.* at 3.

The applicant's husband provided that he resides with his mother. He expressed fear regarding his mother's emotional state should he relocate to Thailand with the applicant, as his mother has already lost her husband and other son, and she would be left with no family or assistance in the United States. *Id.* He explained that his mother is not fluent in English and she has minimal education. *Id.* He provided that his mother works as a housekeeper at a rate of \$15 per hour, thus she requires his financial support in order to meet her expenses. *Id.* The applicant's husband stated that his mother refuses to move to a new country at her age. *Id.* He stated

that his mother suffered severe lumbar joint strain which rendered her unable to work for several months. *Id.* at 4. He explained that she would be without assistance if she suffers further injury. *Id.*

The applicant's husband stated that his mother took a second mortgage on her home in order to fund a business opportunity for him, and that they would lose this money if he relocates to Thailand. *Id.* at 5. He provided that he is an engineer in the United States and his career is stable and growing, earning him \$70,000 per year. *Id.* at 4. He stated that, as a non-Thai national, he would not be permitted to secure a license to continue working as an engineer in Thailand, thus his career would be destroyed. *Id.*

The applicant's husband expressed concern for the welfare of the applicant and his son, and he indicated that he wishes for his son to have healthcare and education in the United States. *Id.* at 5. He provided that his family's insurance is dependent on his employment, and thus they would lose it if he relocates to Thailand. *Id.* He explained that the applicant is recovering from a traumatic ordeal, and he wishes to offer her support. *Id.* The applicant's husband stated that a denial of the applicant's waiver application will force him to choose between his mother and his wife and son. *Id.* 4.

The applicant's mother-in-law stated that the applicant's husband is very close with the applicant, and that he is lonely due to their separation. *Statement from Applicant's Mother-in-law*, dated October 20, 2004. She expressed that she is close with the applicant and the applicant's husband, and that she wishes to be with them. *Id.* at 1. The applicant's mother-in-law explained that the applicant's husband had a difficult time growing up due to the absence of his father, and she stated that the applicant's husband will not be happy unless his family is together. *Id.* She asserted that she will not go to Thailand if the applicant's husband departs, as she is too old and would be unable to learn to read and write Thai. *Id.* She expressed fear for how she will survive without the applicant's husband's support. *Id.* She provided that the applicant's husband pays for her mortgage and some of her bills, and she would be unable to meet her financial needs in his absence. *Id.* at 2.

The applicant provided an evaluation of her husband's mental health from a psychiatrist. In the evaluation, [REDACTED] reported that he observed that the applicant's husband was experiencing "moderate distress." *Report from [REDACTED]* dated October 16, 2004. [REDACTED] explained that the applicant's husband has no peers or support group other than the applicant and his mother. *Id.* at 2. [REDACTED] indicated that the applicant's husband has had poor relationships with the male figures in his life, and that his father left when he was very young. *Id.* [REDACTED] observed that the applicant's husband "is defined empirically by his success in protecting and financially and emotionally supporting the women in his life," and that it is important for him to cultivate a stable family life. *Id.* at 3. [REDACTED] found that the applicant's husband meets the criteria for Dysthymic Disorder, and that it has been a lifelong, chronic difficulty that has made him more susceptible to more severe anxiety and depressive spectrum disorders. *Id.* at 4. [REDACTED] stated that the applicant's husband is in partial remission of Major Depressive Disorder, and that if he suffers another episode he will have recurrent depression which is unlikely to remit without lifelong treatment. *Id.* at 5. [REDACTED] further found that the applicant's husband suffers from adjustment disorder and social anxiety disorder, and that he has suffered from emotional harm in excess of that which would be expected for the circumstances that the applicant's husband has been placed in. *Id.* at 6-7. [REDACTED] expressed his opinion that it would be equally detrimental for the applicant's husband to be separated from his mother as from the applicant and his child. *Id.* at 7.

Counsel asserts that the applicant has shown that her husband will experience extreme hardship if she is prohibited from entering the United States, and the district director abused her discretion in denying the application. *Brief from Counsel*, submitted February 17, 2005. Counsel contends that the district director failed to consider all relevant factors regarding the applicant's case. *Id.* at 8-9. Counsel asserts that the district director failed to give adequate attention to the psychological evaluation of the applicant's husband, and the district director did not consider all of the factors of hardship to the applicant's husband in aggregate. *Id.* at 9-10. Counsel contends that the district director erred in treating the applicant's relationships to her husband and son as after-acquired equities, as equities can only be given less weight if they were acquired after a final order a deportation has been issued, not after the commencement of proceedings as in the present case. *Id.* at 11-12.

Upon review, the applicant has shown that her husband will suffer extreme hardship should she be prohibited from entering the United States. The record shows that the applicant's husband's mental health is closely connected to his relationships with his mother ("the applicant's mother-in-law"), the applicant, and his son. The record further reflects that the applicant's mother-in-law is unwilling to relocate to Thailand with the applicant's husband, as she does not speak Thai, she lacks education with which to secure new employment, and she states that such a transition would be too difficult in middle age after a long residence in the United States. It is noted that the applicant's mother-in-law's eligibility for permanent residence in Thailand is unclear, thus it is not evident that she may obtain a long-term immigration status there that permits her to engage in employment. Thus, as the applicant's mother-in-law will likely not relocate to Thailand if the applicant is prohibited from returning to the United States, denial of the waiver application would require the applicant's husband to choose between residing with his mother in the United States, or residing with the applicant and his son abroad. As discussed by [REDACTED] such a choice serves as a significant stress on the applicant's husband's mental health status.

The applicant's husband has resided with his mother for most of his life, and they share a close companionship. While the record shows that the applicant's mother-in-law earns independent income at a rate of approximately \$15 per hour, she has sustained recent injury that temporarily rendered her unable to perform her duties as a housekeeper. The applicant's husband presently provides financial support for his mother, including assistance with her mortgage and regular bills. It is understood that any financial struggle of the applicant's mother-in-law as a result of the applicant's husband losing the ability to support his mother economically would cause additional emotional hardship for the applicant's husband.

The record shows that applicant's husband has a promising career as an engineer in the United States, earning an income of approximately \$70,000. However, the applicant provided documentation to show that foreign nationals are not permitted to obtain a license to work as engineers in Thailand. Thus, the applicant's husband would be compelled to sacrifice his professional position in order to reside in Thailand with the applicant and his son, which would constitute a significant hardship.

It is further noted that the applicant's husband has no ties to Thailand other than the fact that his wife and son are there. He does not speak Thai and he has never resided in the country. Thus, relocating there would require him to adapt to a new language and culture at a time when his professional life is thriving in the United States. It is further understood that the applicant's husband would experience emotional hardship in foregoing the opportunity to have his son complete his education in the United States. The applicant's husband reports that he will relocate to Thailand if the applicant's waiver request is denied, as he cannot be

separated from his wife and son. Thus, the record suggests that the applicant's husband will endure all of these hardships if the applicant is prohibited from entering the United States.

As discussed above, should the applicant's husband remain in the United States, separated from his wife and son, he would endure significant emotional hardship. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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. However, the AAO finds that the record supports that the applicant's husband would experience emotional hardship due to family separation that goes beyond that which would ordinarily be experienced by the spouse of one deemed inadmissible. As detailed in [REDACTED] report and the applicant's husband's statement, the applicant's husband has experienced emotional difficulty in his life stemming directly from family separation that has been imposed on him since a young age. [REDACTED] report does not represent that the applicant's husband is currently under treatment from a mental health professional, yet it is sufficiently detailed to reflect that the applicant's husband's emotional health is precarious and at risk of long-term disturbance should he be compelled to endure additional disintegration of his family.

The record shows other elements of hardship to the applicant's husband should he remain in the United States, such as the need to financially support two households, one in the United States and one in Thailand. He would be compelled to endure the additional expense of long-distance communication and travel to Thailand. Should his son come to live with him in the United States, he would be compelled to balance his childcare and professional responsibilities without the assistance of the applicant. While the applicant's husband earns a substantial income and such economic hardships do not constitute extreme hardship by themselves, all hardships to the applicant's husband must be considered in aggregate.

Based on the forgoing, the AAO finds that the applicant's husband will face extreme hardship if the applicant's waiver application is denied, whether he remains in the United States or relocates abroad. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if she is prohibited from entering the United States.

#### Discretionary Factors

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

The applicant knowingly entered the United States with fraudulent documentation in April 1994, and she engaged in prostitution until approximately April 1995. The record contains inconsistent statements from the applicant regarding her entry to and prostitution in the United States. The applicant has not resolved these inconsistencies, and they have a bearing on her veracity in these proceedings.

The positive factors in this case include:

The applicant has significant family ties to the United States, including her husband and mother-in-law; the applicant's husband would suffer extreme hardship if the applicant is prohibited from entering the United States; the applicant takes care of her U.S. citizen son, and her son would lose the advantages of life and education in the United States if he remains in Thailand for an indefinite period; the applicant's U.S. citizen mother-in-law has expressed a desire to reside as a family in the same household with the applicant, and it is evident that the applicant would be of help to her mother-in-law, and; the applicant has not been convicted of any crimes or engaged in prostitution since 1995.

It is noted that the district director commented that the applicant's marriage to her husband constitutes an after-acquired equity, and thus this relationship should not be accorded significant discretionary weight. However, whether a factor is an after-acquired equity is considered in the context of deportation proceedings. The fact that the applicant married her husband after she was placed into deportation proceedings does not undermine a favorable exercise of discretion in the present waiver proceeding.

Although the applicant's immigration violations and prostitution in the United States cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h)(1)(B) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

**ORDER:** The appeal is sustained.