



U.S. Citizenship
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FILE:

Office: LOS ANGELES, CA

Date: JUN 07 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Iran who 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 is the spouse of a naturalized citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 18, 2004.

On appeal, counsel asserts that the denial of the waiver would impose extreme hardship on the applicant's spouse because the applicant's spouse suffers from chronic depression as a result of unsuccessful attempts to have children. *Brief in Support of the Appeal of [REDACTED]* dated December 15, 2004.

In support of these assertions, counsel submits a brief; a psychological assessment, dated December 14, 2004; a letter from a psychiatrist, dated November 8, 2000 and a letter from a primary care physician, dated November 30, 2004. The entire record was considered in rendering a decision on the appeal.

The record reflects that on January 7, 1998, the applicant was convicted of Sale Counterfeit Mark in the Superior Court of California, County of Los Angeles.

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

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (ii) Exception – Clause (i)(I) shall not apply to an alien who committed only one crime if –
 - (I) the crime was committed when the alien was under 18 years of age, and the crime was committed . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States . . .

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

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

. . . .

- (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 . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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 record reflects that the spouse of the applicant has been diagnosed with depression and adjustment disorder. *See Letter from* [REDACTED] dated November 8, 2000 (stating that the applicant's spouse suffers from Adjustment Disorder with Depressed and Anxious Mood); *see also Psychological Assessment by* [REDACTED], dated December 14, 2004 (characterizing the applicant's spouse as "a woman who has significant depression and adjustment disorder"). The record establishes that the mental health issues experienced by the applicant's spouse are the result of the couple's inability to conceive a child and have been present for over 10 years. *See Letter from* [REDACTED] dated November 30, 2004 (indicating that the writing physician has treated the applicant's spouse since July 1993 and that she has been suffering from chronic depression and anxiety disorder in part from repeated unsuccessful attempts to have children). Moreover, the record demonstrates that the presence of the applicant is necessary to combat the symptoms experienced by his spouse and that his removal from the United States would likely lead her condition to worsen. *See Psychological Assessment by* [REDACTED] ("I believe that she would decompensate significantly if [REDACTED] were to have to leave and could very possibly become involved in full fledged clinical depression and become suicidal. Since she has already experienced so much stress just dealing with the matters of the infertility assessments, the additional stress of losing [REDACTED] would be overwhelming."). The record demonstrates that the applicant's spouse has experienced periods in which she is unable to function without heavy medication, even in the presence of the applicant, lending weight to the assertion that her mental state would further decline if the absence of the applicant. *See Letter from* [REDACTED] (stating that the condition of the applicant's spouse "reached to a level of psychological crisis and nervous breakdown in a way that she has been regularly taking tranquilizers to be able to go on with her regular activities"). Moreover, the record reflects that the applicant's spouse provides care to her elderly mother rendering it impossible for her to relocate to Iran in order to remain with the applicant. *See Letter from*

(explaining that the applicant's spouse has taken care of her mother for the past 10 years and that the applicant assists her in providing this care). It is also noteworthy that relocation to Iran would entail ending the medical treatment received by the applicant's spouse in the United States and quash any further hope of conceiving a child held by the applicant and his spouse. *See Brief in Support of the Appeal of* [REDACTED] As such, the record thoroughly demonstrates hardship imposed on the applicant's spouse as a result of the inadmissibility of the applicant that is beyond the usual hardship that accompanies separation as a result of removal or deportation.

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 favorable factors in this matter are the extreme hardship that would be imposed on the applicant's spouse as a result of the applicant's inadmissibility to the United States.

The unfavorable factor in this matter is the applicant's conviction for Sale Counterfeit Mark. While the AAO cannot emphasize enough the seriousness with which it regards this flagrant breach of the laws of the United States, the severity of the applicant's crime is at least partially diminished by the fact that, according to the record, the applicant has not been convicted of any other crime for the past eight years. Moreover, the record reflects that the applicant is an upstanding citizen of the community who is involved in his Temple and provides assistance to family members. *See Psychological Assessment by* [REDACTED]

It is concluded that the favorable factors in the application outweigh the unfavorable ones. 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) of the Act, 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. The previous decision of the district director is withdrawn, and the application is approved.