

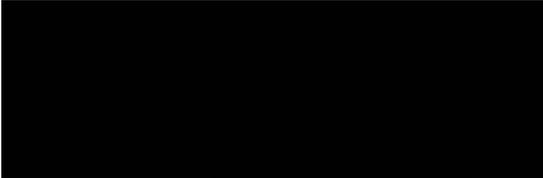


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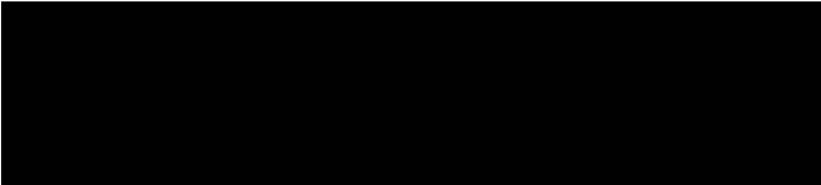
Date: JUN 14 2006

IN RE:



PETITION: 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 PETITIONER:



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 District Director, Phoenix, Arizona, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of China who was born in Hong Kong and 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), for having been convicted of crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen and son of two lawful permanent residents of the United States. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and parents.

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 May 30, 2002.

The record reflects that, on January 8, 1997, the applicant pled nolo contendere to petit larceny and was sentenced to 1 day in jail and a fine. On December 15, 1998, the applicant was convicted of petit larceny and was sentenced to 40 hours of community service and a fine.

On November 7, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse, [REDACTED]. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Reno District Office on August 21, 2001. The applicant testified that he had committed and been convicted of the crime of petit larceny on two occasions.

On April 22, 2002, the applicant filed the Form I-601 with no documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the applicant's spouse, parents and sister will suffer extreme hardship if the applicant is not granted a waiver. *See Applicant's Brief in Support of Appeal*, dated July 18, 2002. In support of his contentions, counsel submitted the above-referenced brief, affidavits from the applicant, Ms. [REDACTED] and the applicant's family members, a psychological evaluation, medical documentation, proof of family relationships and country conditions information for Hong Kong and the Philippines. The entire record was reviewed in rendering a decision in this case.

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

- (1) Criminal and related grounds. —
  - (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 . . . is inadmissible.

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

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I). . . 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 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

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction and admission to committing crimes involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

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 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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 record reflects that Ms. [REDACTED] is a native of the Philippines who became a lawful permanent resident in 1986 and a naturalized U.S. citizen in 1997. The applicant's father, [REDACTED] and his mother, [REDACTED] are natives of China who became lawful permanent residents in 2004. The applicant and Ms. [REDACTED] have no children. The record reflects further that the applicant and Ms. [REDACTED] are in their 20's, Mr. [REDACTED] is in his 50's, [REDACTED] is in her 40's and Ms. [REDACTED] and M [REDACTED] have some health concerns.

Counsel contends that the applicant's U.S. citizen sister will suffer extreme hardship if she were to remain in the United States without the applicant. The applicant's sister is not a qualifying family member, therefore, hardship suffered by the applicant's sister will not be considered in this decision.

Counsel contends that [REDACTED] would suffer extreme hardship if she were to remain in the United States without the applicant. [REDACTED] in her affidavit, states "ever since I learned that the Immigration Service has denied [REDACTED] waiver I have felt extremely anxious and depressed . . . I will be required to chose between leaving my husband, or facing the prospect of spending the rest of my life, living in very modest, if not impoverished conditions, with my husband in Hong Kong . . . in either situation I will become severely depressed."

Financial records indicate that Ms. [REDACTED] salary is approximately \$19,240, while the applicant has not contributed to the household income over recent years. In 2000, a year in which the applicant contributed to the household income, Ms. [REDACTED] contributed roughly 88% or approximately \$12,317. Additionally, Ms. [REDACTED] has family members in the United States who may be able to support her financially in the absence of her husband. The record shows that, even without assistance from family members, Ms. [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. The record does not support a finding of financial loss that would result in an extreme hardship to Ms. [REDACTED] if she had to support herself without additional income from the applicant, even when combined with the emotional hardship described below.

In support of his contention that Ms. [REDACTED] will suffer extreme hardship, counsel submits a psychological evaluation, indicating that Ms. [REDACTED] is very distressed about the prospect of losing her husband . . . the threat of separation is having a pronounced psychological impact on [REDACTED], which is evidenced by her current feelings of anxiety and depression . . . complicating [REDACTED] anxiety is her realistic concern about [REDACTED] ability to earn a living in Hong Kong . . . [REDACTED] as suffered daily anxiety and fear for the well being of her husband and their family . . . she may be suffering from mild clinical depression at this time . . . [REDACTED] would be severely impacted psychologically if her husband [REDACTED] was required to leave the United States . . . evidence of depression is apparent." The AAO notes that the psychologist found that Ms. [REDACTED] "has no prior history of depression, and it is a preliminary determination whether [REDACTED]'s current symptoms of anxiety and depressed feelings constitute a diagnosis of clinical depression, or if this is an adjustment reaction in response to her shock about learning of the possibility that [REDACTED] could be forced to leave," indicating that Ms. [REDACTED] does not suffer from a mental illness that would cause her to suffer emotional

hardship beyond that commonly suffered by aliens and families upon deportation. In addition, the report was based on a single meeting with Ms. [REDACTED]. The report can, therefore, be given little weight.

There is evidence in the record that Ms. [REDACTED] has been treated for a migraine in the past. However, the medical documentation provides no indication whether Ms. [REDACTED] receives regular treatment for her migraines, whether she requires assistance during her migraines or whether the applicant's departure from the United States would have any bearing on her migraines. Moreover, the applicant, in her affidavit, does not assert that her migraines would cause her to suffer emotional hardship due to the applicant's departure from the United States. There is no evidence in the record to suggest that Ms. [REDACTED] suffers from a mental or physical illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Finally, according to the record, Ms. [REDACTED] has family members, such as her parents, to support her emotionally in the absence of her husband. The AAO finds that the hardships listed by Ms. [REDACTED] are hardships that would normally be expected with any spouse whose alien spouse is being deported to a foreign country.

Counsel contends that Ms. [REDACTED] would suffer extreme hardship if she returned to the Philippines with the applicant. The Philippines does not recognize dual citizenship and Filipino citizenship is lost when a person voluntarily acquires foreign citizenship. The AAO notes that the applicant is not a citizen of the Philippines and that, when Ms. [REDACTED] became a naturalized U.S. citizen she involuntarily lost her Filipino citizenship. Therefore, counsel and Ms. [REDACTED] contentions, in regard to extreme hardship upon return to the Philippines, are moot.

Counsel contends that Ms. [REDACTED] would suffer extreme hardship if she returned to Hong Kong with the applicant because she would be unable to continue her education, they would only be able to obtain menial jobs, they would face difficulty in finding housing and she would have to sacrifice the valuable democratic rights she has in the United States because Hong Kong is controlled by a communist country. Counsel also contends that Ms. [REDACTED] would suffer hardship because her migraine headaches would become worse in Hong Kong making it difficult for her to find work and raise a family. Ms. [REDACTED] in her affidavit, states if she is required to accompany the applicant to Hong Kong "I cannot imagine how we would live. I am very close to my mother . . . I am also very close to my stepfather . . . I want to finish my education and move on with my career so that I can provide for my parents, in their later years . . . I am also very close to my cousins . . . they all live in the Reno area and we get together all of the time . . . I will feel great loss and grief due to separation from my mother and the other members of my extended family . . . I am afraid we will not be able to find jobs or housing . . . while [REDACTED] can speak Cantonese, he can only recognize a few basic Chinese characters . . . he would find it impossible to continue his education or find anything other than a low paying job . . . I cannot understand Chinese at all . . . I would be unable to continue my education in Hong Kong . . . the Filipino people who live and work in Hong Kong work in low paying jobs as servants or nannies . . . I am afraid that I would only be able to find that kind of work in Hong Kong . . . I understand that the space allotments for public housing are very small, and that it would be almost unthinkable for people like [REDACTED] and me, who have grown up in America, to try to raise a family in such a small living space . . . there is currently very high unemployment in Hong Kong . . . [REDACTED] and I both feel very privileged to have grown up in a free country like the United States where all people are treated equally . . . I would find it extremely distressing for both of us to have to live and raise our children in a country where the people do not enjoy freedom and democracy like we do in this country . . . [REDACTED] remembers being afraid of the corporal punishments which

was [sic] regularly administered by his teachers . . . neither of us want our children to be educated under those type [sic] of circumstances . . . I have suffered from migraine headaches . . . I believe my migraines are made more frequent and more intense by the heat and humidity of the weather . . . I believe that if my husband and I must live in Hong Kong that I will suffer debilitating headaches which will be made worse by Hong Kong's hot and humid weather . . . I will become severely depressed.”

The psychological evaluation states that Ms. [REDACTED] “is concerned about a move for health as well as financial reasons . . . history of migraine headaches . . . exacerbated in hot and humid conditions . . . she has been under a doctor's care for migraines since she was 13 . . . [REDACTED] and [REDACTED] share the belief they could not live in a country, which is politically oppressive, and would not afford them the opportunity to raise their family in a democracy . . . she feels she is in an impossible situation as she is confronted with either giving up [REDACTED] or her schooling, her career and her home and her family to live in a country which is foreign to her . . . she believes she can't leave her parents . . . very concerned about the possibility of being forced to raise her children outside the United States . . . fearful to have their children raised in strict school systems, which endorse corporal punishment . . . [REDACTED] possible removal from the United States is creating a psychological hardship for [REDACTED] because she is very close to her family in the United States . . . leaving the United State is not an option for her, as she is an only child, and she is very close to her parents . . . she does not want to . . . move to Hong Kong.” As discussed above, there is no evidence that Ms. [REDACTED] suffers from a mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation and the report can be given little weight. There is evidence in the record that Ms. [REDACTED] suffers from and has been treated for migraines in the past. However, the medical documentation provides no indication that the applicant receives regular treatment for her migraines, whether she requires assistance during her migraines, whether the move to Hong Kong would have any bearing on her migraines or whether treatment for her migraines would be unavailable to her in Hong Kong.

Counsel, Ms. [REDACTED] and the psychological evaluation do not assert, and there is no evidence in the record to suggest, that the applicant and Ms. [REDACTED] would be completely unable to financially support the family in Hong Kong, only that they would live at a standard less than what would be available in the United States. There is no evidence in the record to suggest that corporal punishment is employed to a greater degree in Hong Kong than in the United States. The evidence in the record does not support a finding that Ms. [REDACTED] will live under a purely communist regime without any rights or freedom of speech. Furthermore, country conditions reports indicate that, while Hong Kong is a Special Administrative Region (SAR) of China, it remains a major international center of finance and trade and is guaranteed a high degree of autonomy, retaining its own legal system, currency, customs policy and immigration laws. *Department of State, Country Reports on Human Rights Practices, Hong Kong, 2000-2005*, [www.state.gov/r/pa/ei/rls/c2671.htm](http://www.state.gov/r/pa/ei/rls/c2671.htm); *Department of State, Background Notes, Hong Kong*, [www.state.gov/r/pa/ei/bgn/2747.htm](http://www.state.gov/r/pa/ei/bgn/2747.htm). The AAO also notes that organized protests in Hong Kong have been successful in preventing freedom-limiting legislation from being passed since it became a SAR of China. *Department of State, Country Reports on Human Rights Practices, Hong Kong, 2000-2005*, [www.state.gov/r/pa/ei/rls/c2671.htm](http://www.state.gov/r/pa/ei/rls/c2671.htm); *Department of State, Background Notes, Hong Kong*, [www.state.gov/r/pa/ei/bgn/2747.htm](http://www.state.gov/r/pa/ei/bgn/2747.htm). While the hardships faced by Ms. [REDACTED] with regard to adjusting to a new culture, economy, environment and language are unfortunate, they are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Moreover, the psychological report indicates that Ms. [REDACTED] does not intend to accompany the applicant to Hong Kong.

Finally, the AAO notes that, as a U.S. 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.

Counsel contends that the applicant's lawful permanent resident parents, Ms. [REDACTED] and Mr. [REDACTED] will suffer extreme hardship if they were to remain in the United States without the applicant. Ms. [REDACTED] and Mr. [REDACTED] in their joint affidavit, state "if [REDACTED] must return to Hong Kong this will cause his mother and me great hardship . . . Our daughter [REDACTED] is working now, but one day she will want to have children and to stay home to take care of them . . . my wife will have only our son to rely on for our care and support . . . he will certainly not be able to take care of his mother and me in our old age . . . I am afraid that without my son's support, I will not be able to afford the medical expenses which I will face as I get older . . . this will cause my wife and me tremendous pain and suffering . . . I am worried that my wife, who has worked so hard over the last twenty years, will face the hardship of having to find work in her advanced years to assist in meeting the financial burden of my future medical expenses."

The psychological evaluation states [REDACTED] father is in poor health, and relies on his children for physical and financial support . . . the family was in clear emotional distress . . . the entire family would be faced with a great burden if [REDACTED] is forced to leave, because they are counting on his ability to help support them financially in the future." The AAO notes that the psychological evaluation is for Ms. [REDACTED] and does not make any diagnosis for the applicant's parents, nor does it indicate that the applicant's parents suffer from a mental illness that would cause them to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. In addition, the report was based on a single meeting with the family. The report can, therefore, be given little weight. There is medical evidence in the record for Mr. [REDACTED]. However, the medical documentation provides no diagnosis for Mr. [REDACTED] and no indication of whether he receives regular treatment, whether he requires assistance or whether the applicant's departure from the United States would have any bearing on his medical condition. There is no evidence in the record to suggest that the applicant's parents suffer from a mental or physical illness that would cause them to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Financial records indicate that the applicant's parents reside with the applicant's sister and her family and there is no evidence that the applicant provides them with any financial support. Finally, according to the record, the applicant's parents have family members, such as their daughter, who may be able to support them financially and emotionally in the absence of the applicant. The AAO finds that while the hardships that would be experienced by the applicant's parents are unfortunate, they are hardships that would normally be expected with any parent whose alien son is being deported to a foreign country.

Counsel and the applicant's parents do not assert that the applicant's parents would suffer hardship if they returned to Hong Kong with the applicant. The AAO is, therefore, unable to find that the applicant's parents would experience hardship should they choose to join the applicant in Hong Kong. Additionally, the AAO notes that, as lawful permanent residents of the United States, the applicant's parents are not required to reside outside of the United States as a result of denial of the applicant's waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse and parents would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Ms. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising

whenever a spouse or son is removed from the United States. 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse or lawful permanent resident parents as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.