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U.S. Citizenship
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Services

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FILE:



Office: PHOENIX, ARIZONA

Date: **AUG 21 2007**

IN RE:



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:



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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant is a native of Vietnam and a citizen of The Netherlands who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of crimes involving moral turpitude. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her United States citizen spouse and children.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Acting District Director's Decision*, dated November 17, 2005. The AAO notes that the Acting District Director states the only waiver available for a section 212(a)(2)(A)(i)(I) ground of inadmissibility is under section 212(i) of the Act; however, the AAO finds that the correct waiver for a section 212(a)(2)(A)(i)(I) ground of inadmissibility is under section 212(h) of the Act.

On appeal, the applicant states that her husband "is the only one in [her] family that brings home an income for the family. He cannot take care of the children by himself." *Form I-290B*, filed November 30, 2005.

The record includes, but is not limited to, a statement by the applicant's husband, reference letters from the applicant's friends and acquaintances, and court dispositions for the applicant's arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of —
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime...

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii)the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii)the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that the applicant initially entered the United States on June 24, 1987 on a B2 nonimmigrant visa, with authorization to remain in the United States until December 24, 1987. On July 19, 1989, the applicant's son, [REDACTED] was born in Arizona. On May 13, 1992, the applicant married [REDACTED] a naturalized United States citizen, in California. On May 29, 1992, the applicant's husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application for Permanent Residence (Form I-485). On May 6, 1996, the applicant was convicted of theft of property, in violation of California Penal Code § 484(A), and was sentenced to two (2) years probation. On February 20, 1999, the applicant's daughter, [REDACTED], was born in California. On June 11, 1999, the applicant's Form I-130 was approved. On May 18, 2000, the applicant was convicted of inflicting corporeal injury on a spouse, in violation of California Penal Code § 273.5(A), and was sentenced to three (3) years probation. In September 2000, the applicant departed the United States and returned on October 16, 2000. On May 15, 2001, the applicant's son, [REDACTED], was born in California. On September 15, 2003, the applicant filed a Form I-601. On November 17, 2005, the Acting District Director denied the Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relatives.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant.

Hardship the alien herself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse and children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The applicant states her two youngest children "really needs [sic] [the applicant] to look after them." *Form I-290B, supra*. The applicant claims that since her husband provides all the income for the household, he cannot take care of the children. *Id.* The applicant's husband states his "life would change very terribly if [the applicant] was deported. [He] cannot imagine life without her. [He] would suffer extreme emotional damage if [they] are separated." *Declaration of [REDACTED]*, filed September 3, 2004. The AAO notes that there are no professional evaluations for the AAO to review to determine how the applicant's husband's mental, emotional, and/or psychological health has been affected by the applicant's immigration status. The applicant's husband claims he cannot go to The Netherlands with the applicant because he is "too old to learn the Dutch language. [He] would not be able to find any work in Europe at all to support [his] family." *Id.* The AAO notes that no documentation was submitted establishing that the applicant's husband could not obtain employment in The Netherlands or that at 42 years of age, he is "too old" to learn Dutch. Sambath Norton states the only reason why the applicant "wanted to stay in the U.S. was because of her children." *Letter from [REDACTED]* filed November 30, 2005. The AAO notes that it has not been established that the applicant's children, who are 6 and 8 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of The Netherlands. The AAO finds that the applicant has failed to establish extreme hardship to her United States citizen spouse and children if they accompany her to The Netherlands.

In addition, counsel fails to establish extreme hardship to the applicant's spouse and children if they remain in the United States. As United States citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states he needs the applicant in the United States to help take care of the children, and that he does not want to put them in daycare. *Declaration of [REDACTED]*. Sambath Norton states the applicant's children need the applicant to "look after and care for them." *Letter from [REDACTED]*, *supra*. It has not been established that the applicant's husband has no family in the area that can help care for the children or that other arrangements could be not be made. The AAO notes that since the applicant is not employed outside of the house. There is no indication that the applicant's spouse will experience a financial hardship as a result of the separation from the applicant. The record fails to demonstrate that the applicant is unable to contribute to

her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and children caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(2)(A) and 212(a)(2)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.