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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 21 2007

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:



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, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant, through counsel, requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed June 6, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. On August 7, 2007, the AAO sent counsel a facsimile requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed; however, the AAO received no reply from counsel. Therefore, the record must be considered complete.

The record reflects that the applicant is a native and citizen of Sri Lanka 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 United States citizen and he 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 his United States citizen spouse.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated May 8, 2006.

On appeal, the applicant, through counsel, claims that the applicant's United States citizen spouse "would suffer extreme and unusual hardship if [the applicant] was forced to return to Sri Lanka." *Form I-290B*, filed June 6, 2006. Additionally, counsel states that the applicant's "town was devastated by the tsunami and several family members died as a result. [The applicant] will have nowhere to live, no job, no shelter and no food to eat." *Id.*

The record includes, but is not limited to, the applicant's marriage certificate, medical documentation regarding the applicant's medical health, and court dispositions for the applicant's arrest and conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on February 15, 2001, the applicant was convicted of organized fraud – scheme to defraud, grand theft in the third degree, and dealing in stolen property, and was sentenced to one (1) year probation.

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 on October 26, 1997, the applicant entered the United States on an A3 nonimmigrant visa, with authorization to remain in the United States until October 25, 2001. On October 19, 2000, the applicant was arrested by the Miami-Dade Police Department for organized fraud, telecom/long distance possession, grand theft in the third degree, and dealing in stolen property. On February 15, 2001, a Dade County Circuit Court judge convicted the applicant of organized fraud – scheme to defraud, grand theft in the third degree, and dealing in stolen property, in violation of Florida Statutes §§ 812.014, 817.034(4)(a)(3), 912.019(2), respectively, and sentenced the applicant to one (1) year probation. On September 20, 2003, the applicant married [REDACTED] a United States citizen. On March 16, 2004, the

applicant's wife filed a Form I-130 on behalf of the applicant. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) at the same time. On March 25, 2005, the Form I-130 was approved. On March 21, 2005, the applicant filed a Form I-601. On May 8, 2006, the Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On November 14, 2006, the Director revoked the applicant's relative immigrant visa petition (Form I-130). On December 1, 2006, the applicant filed a Notice of Appeal to the Board of Immigration Appeals (BIA) (Form EOIR-29).

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 himself 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. 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 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 asserts he was improperly convicted of the criminal charges because his "English is limited...[he] did not commit telephone fraud, as he could not even speak English at the time, but instead had allowed a homeless man to stay at his house for two weeks. During this time the man used the telephone to take numbers from other's credit cards. [The applicant] was unaware of what was occurring." *Statement in Support of I-601 Waiver*, dated March 7, 2005. The applicant's assertion is unpersuasive. "[C]ollateral attacks upon an [applicant's] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned." *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted). Moreover, this office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See id*; *Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980) (the Service cannot go behind the judicial record to determine the guilt or innocence of an alien for a criminal offense). The AAO finds that the applicant's criminal conviction is final, as the applicant did not establish that his case is on appeal.

Counsel asserts that the applicant's United States citizen spouse would suffer extreme hardship if the applicant were removed from the United States. *Form I-290B, supra*. Counsel states that if the applicant's wife joins the applicant in Sri Lanka, she will have nowhere to live and no job. *Id*. The AAO notes that the applicant's wife is an experienced nanny, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Sri Lanka. Additionally, the applicant failed to demonstrate whether

or not he has any family ties in Sri Lanka. The applicant provided medical documentation that he suffers from high blood pressure, which has resulted in heart problems. As stated above, hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings. Counsel states that the applicant's wife "suffers from vision problems and underwent eye surgery in March of 2002 in Michigan." *Addendum to Statement of Hardship in Support of I-601 Waiver*, dated April 1, 2005. Additionally, counsel claims the applicant's wife "is going blind." *Form I-290B, supra*. The AAO notes that there was nothing submitted from a doctor indicating exactly what the applicant's wife's medical issues are, and/or any prognosis or what assistance is needed and/or given by the applicant. The AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding the extreme hardship she would suffer if the applicant were removed from the United States. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she accompanied the applicant to Sri Lanka.

In addition, counsel fails to establish extreme hardship to the applicant's spouse if she remains in the United States. The AAO notes that the applicant's wife resides in Michigan, working as a live-in nanny, while the applicant resides in Florida. There was no documentation submitted establishing that the applicant's wife will experience financial hardship as a result of the separation from the applicant. As a United States 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. Additionally, beyond generalized assertions regarding country conditions in Sri Lanka, the record fails to demonstrate that the applicant will be unable to contribute to his 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, her 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 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) 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.