

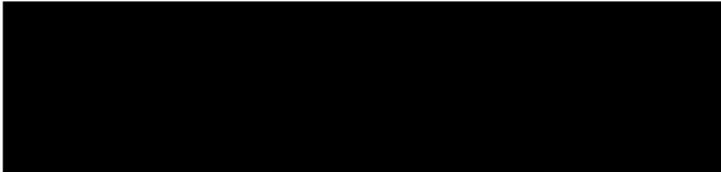
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MIAMI, FL Date: **AUG 30 2007**

IN RE: Applicant: [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:

SELF-REPRESENTED

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 application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant is a native and citizen of the Bahamas 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 seeks a waiver of her ground of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director determined that the applicant had failed to establish a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant indicates that her husband will suffer emotional and financial hardship if she is denied admission into the United States, and she asks that her Form I-601 be approved.

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

(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)

(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 (and the alien released from any confinement to a prison or correctional institution imposed for the crime) 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, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

The record reflects that on September 1, 2000, the applicant was found guilty of:

- 1) Burglary of an Occupied Dwelling, in violation of Florida Statute § 810.02
- 2) Criminal Mischief (under \$200), in violation of Florida Statute § 806.13
- 3) Improper Exhibition of Dangerous Weapons, in violation of Florida Statute § 790.10
- 4) Theft, in violation of § 812.014.

Florida Statute § 810.02 provides in pertinent part that:

(1)(a) [F]or offenses committed on or before July 1, 2001, “burglary” means entering or remaining in a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.

Florida Statute § 806.13 provides in pertinent part that:

(1)(a) A person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another including, but not limited to, the placement of graffiti thereon or other acts of vandalism thereto.

Florida Statute § 790.10 provides in pertinent part that:

If any person having or carrying any dirk, sword, sword cane, firearm, electric weapon or device, or other weapon shall, in the presence of one or more persons, exhibit the same in a rude, careless, angry, or threatening manner, not in necessary self-defense, the person so offending shall be guilty of a misdemeanor of the first degree

Florida Statute § 812.014 provides in pertinent part that:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

The applicant does not dispute the finding that she has committed crimes involving moral turpitude. Moreover, the AAO finds that the Florida statutory definitions discussed above clearly establish that the offenses committed by the applicant constitute “crimes of moral turpitude” for immigration purposes. The AAO notes that the ground of inadmissibility exceptions referred to in sections 212(a)(2)(A)(ii)(I) and (II) of the Act are not relevant to the present matter, as the applicant has committed more than one crime involving moral turpitude.

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

The Attorney General [now, Secretary, Department of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . .

(1)(B) [I]n 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.

Section 212(h) 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.¹ If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

The record reflects that the applicant married a U.S. citizen on March 20, 2002. The applicant's husband is a qualifying family member for section 212(h) of the Act extreme hardship purposes.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors that it deemed relevant in determining whether an alien has established extreme hardship. 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. See *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The applicant asserts that her husband will suffer extreme emotional and financial hardship if she is not allowed to remain with him in the United States. Through counsel, the applicant additionally indicated in her initial Form I-601 application, that her husband would be unable to attend school full-time if she does not support their family financially. To support her assertions, the applicant submits letters written by herself and her husband. The applicant also submits copies of their auto insurance coverage on two cars.

In her letter, the applicant states in pertinent part that her husband is suffering from depression and emotional conditions, and that he is very nervous and cannot sleep at night due to the applicant's possible departure from the United States.

¹ It is noted that the applicant is not a qualifying family member for section 212(h) of the Act purposes. Accordingly, hardship to the applicant may only be taken into account insofar as it is established that it contributes directly to hardship suffered by the applicant's husband.

The applicant's husband [REDACTED] indicates in his letter that he loves the applicant very much and that it is emotionally depressing to think about her dilemma, and how it affects him. [REDACTED] states that he thinks about their possible separation when he eats and sleeps. He states further that he blacked out at work due to stress and the thought that the applicant might be removed from the United States.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if the applicant's waiver of inadmissibility were denied and he remained in the United States, or if he moved with the applicant to the Bahamas.

The hardship claims made on appeal lack material detail, and the record lacks corroborative evidence to establish that the applicant's husband would suffer emotional or financial hardship beyond that commonly associated with removal if the applicant were denied admission into the United States. The record contains no medical or psychological evidence to corroborate the assertion that [REDACTED] has suffered from, or been treated for depression, blackouts, or emotional hardship related to the applicant's possible departure from the United States. The auto insurance bill evidence contained in the record additionally fails to support the assertion that [REDACTED]s would suffer financial hardship if the applicant is denied admission into the United States. The AAO notes further that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The record also lacks evidence to establish that the applicant's husband would suffer extreme emotional or financial hardship if he moved with the applicant to the Bahamas. The applicant made no assertions of hardship that her husband would suffer if he moved with the applicant to the Bahamas. The AAO notes further that, distress from being unable to reside close to family is not the type of hardship that is considered extreme. *See 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.) The AAO additionally notes that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, does not rise to the level of extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986.) Having found that the applicant failed to establish extreme hardship to her husband, the AAO notes no purpose in discussing whether the applicant merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden in the present matter. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.