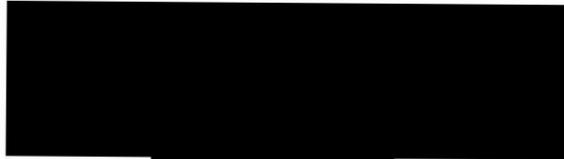




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy



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Office: BANGKOK, THAILAND

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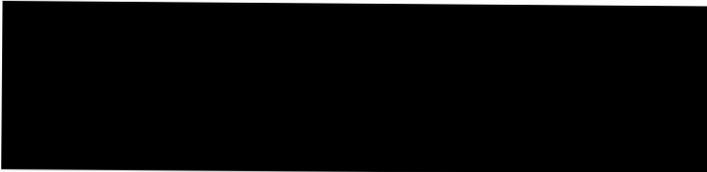
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

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, Bangkok, Thailand. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Vietnam who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation and 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 son of lawfully permanent resident parents and he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) and 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his mother and father.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 29, 2005.

On appeal, the applicant contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that he failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under sections 212(i) and 212(h) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, criminal records from Vietnam for the applicant; statements from the applicant's father and mother; a loan statement; money wire receipts; and [REDACTED] certificates, invoices, and acceptance letter. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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.

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 -

(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 . . .

The record reflects that on June 3, 2004 the applicant stated that he had never been charged, arrested or convicted of any offense or crime on his Form DS-230, Application for Immigrant Visa and Alien Registration. *Form DS-230*. In 2002, the applicant was convicted of property theft for which he was sentenced to two years incarceration. *Criminal Record, The Service of Justice of Ho Chi Minh City, Vietnam*, dated March 19, 2004. The applicant successfully completed his sentence and his conviction was subsequently expunged. *Certification of Completely Finishing a Punishment of Imprisonment, Ministry of Police, Ho Chi Minh City, Vietnam; Criminal Record, Service of Justice of Ho Chi Minh City, Vietnam*, dated June 16, 2006. Counsel asserts that the applicant failed to disclose his conviction on his immigrant visa application due to the confusing and vague language of the question. *Attorney's brief*. According to counsel, the applicant believed that if he had answered yes, he would have been answering yes to all of the offenses posed in the question. *Id.* The AAO notes that the question specifically asks “[h]ave you ever been charged, arrested *or* (emphasis added) convicted of any offense or crime?” The AAO finds that the question clearly delineates from being charged, arrested or convicted, and counsel’s assertion of the applicant’s inability to correctly understand the question is without merit. Furthermore, even if the applicant had made the unwarranted assumption of believing a yes response included being charged, arrested, and convicted for an offense or crime, at the time of his filing of the Form DS-230, the applicant had been charged, arrested and convicted for property theft. **Based on the record, the AAO finds that the applicant committed a misrepresentation and is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.**

In addition, the applicant’s conviction for property theft is a crime involving moral turpitude, and therefore, the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Though counsel submitted evidence that the conviction was eventually expunged, it remains a conviction for immigration purposes. “For purposes of U.S. immigration laws, a foreign pardon, in itself, does not wipe out an alien’s foreign conviction or relieve him from the disabilities which flow therefrom.” *Marino v. INS*, 537 F.2d 686, 691 (2nd Cir. 1976) (citations omitted); *see also, Mercer v. Lence*, 96 F.2d 122 (10th Cir. 1938); *United States ex rel. Palermo v. Smith*, 17 F.2d 534 (2nd Cir. 1927). Moreover, even within the United States, no effect is given in

immigration proceedings to a state action which purports to vacate or otherwise remove a conviction or record of guilt. *See Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) 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. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver. The only relevant hardship in the present case is hardship suffered by the applicant's lawfully permanent resident father or mother if the applicant is removed. If 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 family ties to 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 AAO notes that extreme hardship to the applicant's father or mother must be established in the event that he or she resides in Vietnam or the United States, as he or she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's father or mother travels with the applicant to Vietnam, the applicant needs to establish that his father or mother will suffer extreme hardship. Both of the applicant's parents are citizens of Vietnam. *Birth certificate of the applicant*. In June 2004, the applicant's parents along with his sister were issued immigrant visas to come to the United States. *Statements from the applicant's father and mother*, dated May 6, 2005. The record does not address what additional family members the applicant's parents may have in Vietnam. Counsel for the applicant asserts that it would be extremely difficult for the applicant's family to return to Vietnam considering the many years they had waited to immigrate to the United States. *Attorney's brief*. They have liquidated all of their belongings to come to the United States and would not have anything if they returned. *Id.* They also fear the treatment they would face from the Vietnamese government given the current ill treatment of returnees from the United States. *Id.* While the AAO acknowledges counsel's assertions, it notes that the record fails to include any documentary evidence to support such assertions. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *Id.* When looking at the aforementioned factors, the AAO does not find

that the applicant demonstrated extreme hardship to his father or mother if he or she were to reside in Vietnam.

If the applicant's father or mother resides in the United States, the applicant needs to establish that his father or mother will suffer extreme hardship. Counsel states that being separated from their son has caused a great financial burden on the applicant's parents. *Attorney's brief*. The applicant lives in Singapore, attending school. *Tuition invoice for the applicant*, [REDACTED] Singapore, dated July 21, 2004. The applicant's parents both work and borrow money from a family member in order to support themselves and pay for the applicant's living expenses in Singapore. *Statements from the applicant's father and mother*, dated May 6, 2005. While the AAO acknowledges these expenses, it notes that the applicant is not required to live or attend school in Singapore. Furthermore, the record does not demonstrate that the applicant is incapable of financially contributing to the support of himself and his family. The applicant's parents are emotionally weak and suffer from constant worry and anxiety due to being separated from their son. *Statements from the applicant's father and mother*, dated May 6, 2005. These emotional conditions have physical manifestations of short-term memory problems, chronic fatigue, hypertension, and gastric ulcers. *Id.* The AAO observes that the record does not include documentation from a licensed health professional supporting these statements. As previously noted, going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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 parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his father or mother if he or she were to reside in 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)(6)(C) 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.