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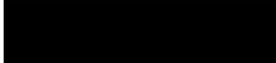
U.S. Citizenship  
and Immigration  
Services

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H2

FILE:



Office: HONG KONG

Date: SEP 07 2007

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.

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 Officer in Charge, Hong Kong and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Taiwan 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 is the spouse of a lawful permanent resident. She now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her spouse.

The Officer in Charge 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 Officer in Charge*, dated October 26, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(h) of the Act. Counsel also asserts that the applicant is not inadmissible, for she has not been convicted of a crime involving moral turpitude. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant; a statement from the applicant's spouse; an additional statement from counsel; a Police Criminal Record Certificate, Taiwan; a prosecutor's indictment, Taiwan; and criminal court records, Taiwan. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On May 16, 1995 she was convicted for violating Paragraph 1 of Articles 29, 210, and 216 Criminal Law of Taiwan for having committed the offense of instigating others to use forged private documents. *Court records, Taiwan Supreme Court Criminal Adjudication*, dated May 16, 1995. She was sentenced to six months imprisonment. *Id.*

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 . . .

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel asserts that the applicant's conviction does not constitute a crime involving moral turpitude, as she was convicted of the offense of instigating others to use forged private documents, not forgery. *Attorney's brief*. The AAO finds that counsel has erred in his analysis.

Articles 210 and 216 of the Criminal Law in Taiwan state in pertinent part:

Article 210, Criminal Law

A person who in a manner likely to cause injury to the public or to another forges or alters a private document shall be punished with imprisonment for not more than five years.

Article 216, Criminal Law

A person who puts into circulation a document specified in one of the Article 210 through 215 shall be punished in accordance with the provisions relating to forge [sic] or altering documents to making [sic] a false entry, or to causing [sic] a false entry to be made.

The plain language of the Taiwanese criminal statutes refers to the act of forgery, not to the act of instigating others to use forged private documents. As the applicant was convicted under these statutes, she has been convicted of the act of forgery. Furthermore, the Police Criminal Record Certificate certifies that the applicant was sentenced to imprisonment for forging documents in Taiwan. *Police Criminal Record Certificate, Taipei City Police Department, Republic of China, Taiwan*. Forgery is a crime involving moral turpitude. *Robinson v. Day*, 51 F.2d 1022 (2d Cir. 1931); *Matter of A-*, 5 I&N Dec. 52 (BIA 1953). As such, the AAO finds that the applicant has been convicted of a crime involving moral turpitude and is thus inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included the presence of 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 spouse must be established in the event that he resides in Taiwan or the United States, as he 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 spouse remains in Taiwan, the applicant needs to establish that he will suffer extreme hardship. The applicant's spouse was born in Taiwan. *Statement from the applicant's spouse*, dated June 22, 2005. The applicant's spouse has no relatives in Taiwan. *Statement from the applicant*, dated June 22, 2005. The applicant's spouse currently lives in Taipei, but plans to move to the United States as soon as the applicant is able to do so. *Statement from the applicant's spouse*, dated June 22, 2005. The applicant's spouse stated that he cannot remain permanently in Taiwan for business and income reasons. *Id.* The AAO observes that the record does not include documentation, apart from the statements of the applicant and her spouse, regarding the type of business the applicant's spouse has and why it is necessary for him to be in the United States. While the AAO acknowledges the statements of the applicant and her spouse, it does not find that the record demonstrates that the applicant or her spouse would be unable to sustain themselves and contribute to their family's financial well-being in Taiwan. Counsel asserts that the applicant and her spouse have developed a business relationship and that if the applicant is barred from admission to the United States, those business plans will not be carried out. *Attorney's brief*. As a result, the applicant's spouse will face substantial financial problems that will constitute more than mere financial difficulties. *Id.* The AAO acknowledges the assertions made by counsel; however, it notes that the record fails to include any documentary evidence to support such assertions. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in Taiwan.

If the applicant's spouse resides in the United States, the applicant needs to establish that he will suffer extreme hardship. The record does not address what family members the applicant's spouse may have in the United States. The applicant's spouse stated that it will be financially impossible for him to travel often between the United States and Taiwan, and without such travel, he does not know what will happen to his marriage. *Statement from the applicant's spouse*, dated June 22, 2005. The AAO notes that the record fails to include any documentation regarding the applicant's spouse's financial state. According to the applicant, she will be alone in Taiwan without the support of her husband and does not know what will happen to their marriage or to their lives. *Statement from the applicant*, dated June 22, 2005. Counsel asserts that the applicant's spouse will suffer long-term adverse psychological effects from his concern about what will happen to the applicant. *Attorney's brief*. The AAO notes that the record does not include an evaluation from a licensed mental health professional regarding the psychological state of the applicant's spouse and how separation from the applicant would affect him. As previously noted, going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Obaighena, supra.*

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 spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal and, therefore, does not demonstrate that he will suffer extreme hardship if the applicant's waiver request is denied. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse whether he remains in Taiwan or resides in 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 section 212(a)(2)(A)(i)(I) 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.