



U.S. Citizenship
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FILE: [REDACTED] Office: HONG KONG, CHINA

Date: **APR 10 2008**

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 PETITIONER:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Hong Kong, China, 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. He 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 two crime involving moral turpitude for which he was sentenced to imprisonment for six months or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to travel to the United States to reside with his spouse and children.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, the applicant asserts that denial of the waiver would result in extreme hardship to his U.S. Citizen wife and children. Specifically, he states that they have been prevented from seeing each other more than once or twice a year, jeopardizing their marriage, and that their separation has resulted in financial hardship to his wife because she must support their two children on her income alone. The applicant submitted an additional statement with the appeal describing these hardships and listing his wife's income and expenses.

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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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 is

established to the satisfaction of the Attorney General 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 applicant was convicted by the Taiwan Taoyuan District Court of theft on August 10, 1993 and sentenced to eight months imprisonment and was convicted of fraud on October 24, 1997 and sentenced to six months imprisonment. The criminal conduct for the first offense took place on March 19, 1993, more than fifteen years ago, but since less than 15 years has passed since the criminal activity for which he was last convicted, the applicant is statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

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 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a forty-two year-old native and citizen of Taiwan who resided in Vietnam from 1996 to 2001 and in China from 2001 to 2004. He has never entered the United States. The record further reflects that the applicant's wife is a thirty-five year-old native of Vietnam. She is a naturalized U.S. Citizen who currently resides in Kissimmee, Florida with their two U.S. Citizen daughters.

The applicant claims that if he is refused admission to the United States, the continued separation from his wife and children will jeopardize their marriage and cause his wife financial hardship. In support of this assertion he submitted a declaration prepared and signed on his wife's behalf by an individual named [REDACTED] who appears to be a relative of the applicant. The declaration states that approval of the waiver is "vital to preserve [their] family" and that the applicant and their two daughters are "eager to live together." The

declaration further states that their older daughter sometimes asks why their father cannot take care of them and says that she misses her father. The applicant's wife states that her parents take care of the children while she is at work. She states she fears that living in a single-parent family could have a negative influence on the children and that she and her daughters may encounter economic hardship if the applicant is not permitted to reside with them in the United States. The emotional hardship the applicant's wife claims she and her children will suffer appears to be the type of hardship normally to be expected when a family member is excluded or deported. *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).

In addition, the applicant submitted a declaration with the appeal stating that their continued separation has resulted in hardship to his wife, who has been waiting on the approval of his visa application for years. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with her spouse's deportation or exclusion. Although the depth of her distress over the prospect of being separated from her spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

The applicant further states that the effects of their continued separation on his wife's economic situation also amounts to extreme hardship. He lists her annual salary and monthly expenses as well as her current savings and states that it has been difficult for her to pay these expenses without his economic support. There is no evidence of any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's exclusion. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981), *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The emotional and financial difficulties that the applicant's wife and children would suffer appear to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. 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). In addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. The court in *Hassan v. INS*, *supra*, further held 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. Further, since the applicant made no claim that his wife or children would experience hardship if they were to join him in Taiwan, the AAO cannot make a finding of extreme hardship if they moved there.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse or children as required under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.