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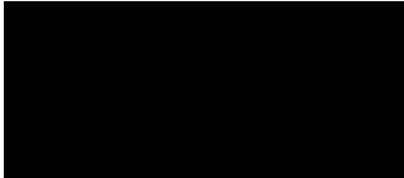
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: **AUG 05 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 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 Officer-in-Charge, Frankfurt, Germany, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 52-year-old native of Peru, and resident of Germany. The director found the applicant to be inadmissible to the United States under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), on the basis of her 2002 shoplifting conviction. The applicant is the beneficiary of an approved Petition for Alien Relative filed on her behalf by her U.S. citizen son. She presently seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), claiming that her inadmissibility would cause extreme hardship to her son.

The officer-in-charge found the applicant to be inadmissible on the basis of her 2002 conviction for Retail Fraud – 2nd degree in [REDACTED]. The officer-in-charge further found that the applicant's inadmissibility would not result in extreme hardship to her U.S. citizen son. The application was accordingly denied.

On appeal, the applicant maintains that she wishes to live in the United States with her son. *See* Applicant's Statement on Appeal. The applicant states that her son is fully dependent on her. *Id.* She explains the circumstances surrounding her criminal conviction, as well as her son's criminal record. *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.
 - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marihuana 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 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 contains the applicant's record of conviction for Retail Fraud - 2nd Degree, entered on February 25, 2002. The applicant was sentenced to 12 months' probation, which she completed in March 2003. The applicant's crime is a crime involving moral turpitude. As such, the officer-in-charge was correct in determining that the applicant is inadmissible and his determination will be affirmed. The question remains whether the applicant is eligible for a waiver of inadmissibility.

A section 212(h)(1)(B) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident spouse, parent, son or daughter of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The applicant's son is a 25-year-old native-born U.S. citizen. He resides with his mother in Germany. *See* Statement of _____ dated April 19, 2006. He claims that he wishes to reside in the United States, but cannot do so without the applicant because she is his sole means of financial support. *Id.* He

states that he is a student. *Id.* His aunt, the applicant's sister, and her family are U.S. citizens residing in Michigan. *Id.* He hopes to "have the opportunity to be closer to our family that live in [the United States]" because they do not have any relatives in Germany. *Id.* The record suggests that his sister, the applicant's daughter, resides in the United Kingdom.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's son would face extreme hardship if the applicant is denied the waiver. The record does not contain any evidence establishing that the applicant's son could not relocate to the United States on his own. Although the applicant's son claims that he is a student and solely dependent on his mother for financial support, the record's only evidence regarding the applicant's financial circumstances is a letter terminating her employment. The applicant's son admits that he has close family ties in the United States, and there is no indication that his U.S. family could not provide emotional or financial support should he need it. There is no evidence in the record that the applicant's son suffers from any chronic, severe or unusual medical condition that requires that the applicant herself care for him, or prevents him from supporting himself. The applicant's inadmissibility would not cause extreme hardship whether the applicant's son decides to remain with her in Germany, or relocate on his own to the United States.

Although the AAO recognizes that the family's separation would cause hardship should the applicant's son decide to relocate to the United States without his mother, such hardship is common to all individuals in similar circumstances and does not rise to the level of "extreme." See *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In sum, the record at best indicates that the applicant's son would face the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is found to be inadmissible to the United States.

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO finds that the applicant failed to establish extreme hardship to her U.S. citizen son as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests 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.