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U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI, FL

Date: DEC 04 2008

IN RE: Applicant:

APPLICATION: Application for Waiver of Inadmissibility Pursuant to 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a 36-year-old native and citizen of Canada. The record reflects that she was convicted of fraud in Canada in 1997. On the basis of this conviction, the applicant 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 beneficiary of an approved Petition for Alien Relative filed on her behalf by her U.S. citizen spouse. 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 U.S. citizen spouse and family.

The district director found the applicant to be inadmissible based on her fraud conviction, and ineligible for a waiver given her failure to establish that her U.S. citizen spouse would experience extreme hardship if the waiver was denied.

On appeal, the applicant, through counsel, claims that the director erred in finding that her spouse would not experience extreme hardship. The applicant further claims that the director should have considered the hardship to her U.S. citizen children.

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:

The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

...
(1)(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, indicating that she was found guilty of Fraud contrary to section 380(1) of the Canadian Criminal Code in 1997. The AAO finds that the applicant's conviction renders her inadmissible as an alien convicted of a crime involving moral turpitude. The AAO thus affirms the director's finding that the applicant is inadmissible as charged under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

Having found that the applicant is inadmissible, the AAO must now determine whether the applicant is eligible for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h).

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 spouse, [REDACTED] is a 32-year-old U.S. citizen. He is a native of Ireland, who has resided in the United States since he was 17 and who became a U.S. citizen upon his naturalization on July 24, 2000. He and the applicant have been married since 1999, and have two U.S. citizen children born in 2003 and 2004, respectively. The applicant’s spouse states that he would not relocate to Canada should the waiver be denied. He cites, among other things, reduced economic prospects and employment opportunities, and lack of family ties. He further claims that relocating to Canada would make it difficult for him to continue to support his mother, who is recently widowed. Also, he opines that his children would not enjoy the same opportunities in Canada. The applicant’s spouse also maintains that remaining in the United States, separated from the applicant, would cause him extreme hardship. In this regard, the applicant’s spouse states that he suffers from depression and anxiety disorders, back pain and headaches associated resulting from stress caused by the prospect of separation from his family. The record includes two opinion letters dated in 2002 and submitted by [REDACTED], a psychologist, and [REDACTED], a nurse practitioner, confirming the impact of the possible separation from the applicant on her spouse’s mental health. The record also includes a 2006 psychologist report, submitted by [REDACTED], indicating that the applicant suffered from emotional abuse by her father, that the abuse caused her to engage in criminal activity, and that she continues to suffer from depression. [REDACTED] further states that the applicant’s children “have already been showing signs of childhood depression separation anxiety” and that denial of the waiver would be “emotionally devastating.” The AAO notes that the applicant’s spouse was employed in the hotel/restaurant management business, first in Marco Island, Florida and more recently in Cape Cod, Massachusetts. The applicant has recently been offered employment by the Dennis, Massachusetts Police Department. The applicant’s spouse submitted a statement in 2006 explaining his daughter’s medical condition (Adrenarache due to partial block in the 3B-

HSD enzyme) and his wife's health (Micro Abnorma Tumor on the Pituitary gland). The record also contains a letter from the applicant's children's pediatrician, citing the emotional impact of separating the family and the possibility of disrupting [REDACTED] established medical care. The applicant maintains that the nearest pediatric endocrinologist in Canada would be four hours away.

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 spouse would face extreme hardship if the applicant is denied the waiver. The record also does not support a finding that the applicant's children would face extreme hardship if the waiver is denied. The record indicates that the applicant's family would face the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States.

Although the AAO recognizes that separation from the applicant would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." While the AAO has carefully considered the emotional impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. See *Shoostary 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"). The AAO notes the applicant spouse's statement, and the psychologists' reports, citing the emotional impact of separation on the applicant's family. The AAO finds, however, that the symptoms cited are not uncommon in the case of any individual facing similar circumstances.

The AAO further finds that the applicant has not established that her spouse or children would face extreme hardship should he relocate to Canada. The record indicates that the applicant has family in Canada, and there is no evidence to support the claim that the applicant's spouse would find it difficult to secure employment or medical treatment for his children (or the applicant). The AAO notes that a "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient" to demonstrate extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986). The applicant has a brother in the United States, and there is no evidence in the record to suggest that he is unable or unwilling to care for his mother. There is also no evidence to suggest the applicant's mother could not also relocate to Canada.

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 concludes that the hardship to the applicant's spouse caused by denial of the waiver is typical for any person in his circumstances and does not rise to the level of "extreme" as required by the statute. The AAO therefore finds that the applicant failed to establish eligibility for a waiver under section 212(h) 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.