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U.S. Citizenship
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FILE:

Office: LOS ANGELES, CALIFORNIA (SANTA ANA)

Date DEC 23 2008

IN RE:

Applicant:

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:

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California (Santa Ana), 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 native and citizen of Korea. 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)(9), for having been convicted of crimes involving moral turpitude. The record indicates that the applicant was convicted twice, in 2000 and 2002, respectively, of Petit Theft. 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 claiming that her inadmissibility would cause extreme hardship to her spouse.

The district director found the applicant to be inadmissible on the basis of her convictions. The director further found that the applicant had failed to establish that her inadmissibility would result in extreme hardship her U.S. citizen spouse. Accordingly, her application for a waiver of inadmissibility was denied.

On appeal, the applicant, through counsel, maintains that her husband would face extreme hardship should the waiver be denied. *See Applicant's Appeal Brief.* The appeal is accompanied by a statement signed by the applicant's husband. The applicant has also recently submitted a physician's certification indicating that she is pregnant.

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:

- (h) 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 before the AAO contains a copy of the criminal records relating to the applicant's 2000 and 2002 Petty Theft convictions. The applicant does not dispute the district director's finding of inadmissibility based on her criminal convictions. The AAO thus affirms the district 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 she is eligible for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h). Fifteen years have not yet elapsed since she committed the crimes for which she was convicted. As such, the applicant is not eligible for a waiver of inadmissibility under section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A). The question remains whether the applicant is eligible for a waiver under section 212(h)(1)(B) of the Act, 8 U.S.C. § 1182(h)(1)(B), on the basis of a claim of hardship to her U.S. citizen husband. The AAO finds that she is not.

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).

In support of her hardship claim, the applicant submits statements made by her and her husband. The applicant's husband, [REDACTED], is a 33-year-old native of Korea. He became a U.S. citizen upon his naturalization in 1994. The record indicates that his father and siblings reside in the United States. The applicant claims that her husband has lived in the United States since the age of 2 and cannot relocate to Korea. The applicant's husband states that he is not fluent in the Korean language, and has few employment prospects in Korea. The applicant's husband states that he is well-employed in the United States, and wishes to remain here with his wife and future children. He states that it would be difficult to financially support two households should his wife return to Korea. The applicant and her husband state that they have a tight emotional bond, and that separation would cause them extreme hardship.

A careful review of the record in its entirety reflects that the applicant's spouse would face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties faced by any other individual in her circumstances. The AAO notes that hardship to the applicant herself is not a relevant consideration under the statute. 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); *see also Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"). The AAO also notes that in evaluating a claim of hardship "[e]quities arising when the alien knows he is in this country illegally . . . are entitled to less weight than equities arising when the alien is legally in this country." *Wang v. INS*, 622 F.2d 1341, 1346 (9th Cir. 1980), *rev'd on other grounds*, 450 U.S. 139 (1981).¹

The AAO notes the applicant's spouse's reluctance to relocate to Korea. The applicant's spouse, as a U.S. citizen, is not required to relocate. The AAO further notes that a "lower standard of living [] and the difficulties of readjustment to [a] culture and environment . . . simply are not sufficient" to demonstrate extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986).

While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation

¹ In this regard, the AAO notes that the applicant is pregnant and expecting a child in January 2009.

from a spouse is at issue. *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 this case, the record does not contain evidence to show that the hardship faced by the applicant's spouse due to the separation from the applicant or the possibility of having to financially support two households rises to the level of extreme. The AAO notes that the applicant's husband has immediate family in the United States. The AAO further notes that the applicant's husband is well-employed, earning over \$10,000 per month. The applicant's husband is not financially dependent on the applicant. The AAO finds that the circumstances facing the applicant's husband occur anytime a couple is separated and do not rise to the level of “extreme” either individually, or in the aggregate.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility under section 212 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.