

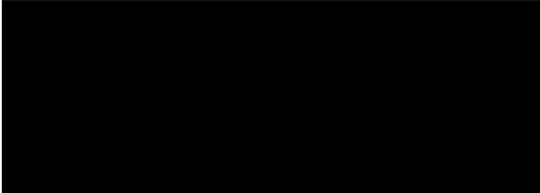
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U.S. Citizenship
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FILE:



Office: HONG KONG

Date:

JAN 02 2008

IN RE:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), 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 who was found to be inadmissible to the United States pursuant to 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 committed a crime involving moral turpitude (fraud). The applicant is the beneficiary of an approved Petition for Alien Relative filed by his son, [REDACTED] a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his son.

The applicant filed the Form I-130 petition naming the applicant as beneficiary on May 23, 2003. The petition was approved on August 23, 2004. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 12, 2005.

In his decision denying the waiver application, the OIC noted that more than 15 years has elapsed since the activities that led to the applicant's conviction for fraud, but concluded that the applicant had failed to show that he had been rehabilitated as required for a waiver of inadmissibility under section 212(h)(1)(A) of the Act. *Decision of OIC*, dated January 10, 2006. In particular, the OIC found that because the applicant never compensated those he defrauded, and avoided serving his prison sentence by remaining outside Taiwan until a statutory exemption to execution of the sentence took effect, he had failed to demonstrate he is rehabilitated. *Id.*

On appeal, the applicant states that he did not flee Taiwan to avoid serving his sentence. He asserts that he "never received any notification of imprisonment," and would have served his time if it had been required of him. He contends that he does not know why he was never required to serve his sentence. The applicant indicates that he regrets the actions that led to his conviction, and has abandoned the life of a "very busy businessman" for an "ordinary, simple" life consistent with his Christian faith. He also states that all his family is "sad" because he is unable to come to the United States, particularly his wife who is now in the United States.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) In general.— . . .[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.

Court documents in the record reflect that the applicant was found guilty in the Taiwan High Court of criminal fraud and judgment was entered against him on February 27, 1983. The applicant was sentenced to imprisonment for a term of one year and six months, a sentence that was reduced to nine months on July 19, 1989. The applicant never served the sentence. In reference thereto, the translation of a document from the Taiwan Taipei District Court Prosecutorial Office states only that "[a]fter being pardoned to be 9 months, has been passed the time effect and is exempted from further execution."

Fraud crimes are generally considered crimes of moral turpitude. *See, e.g., Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966). The applicant has not disputed that his conviction constitutes a crime involving moral turpitude rendering him inadmissible under section 212(a)(2)(A)(i) of the Act.

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

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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

(Emphasis added).

The AAO first addresses whether the applicant merits a waiver of inadmissibility under section 212(h)(1)(A). As stated above, the OIC concluded that the applicant does not merit a waiver of inadmissibility under section 212(h)(1)(A) because he has not been rehabilitated, as manifested by his failure to compensate those he defrauded and his evasion of the authorities. In the notes from the applicant's interview by a consular officer dated July 22, 2005, the officer observes that the applicant "managed to avoid arrest and lived as a wanted fugitive for six years and three months, after which a Taiwanese statute of limitations rendered his sentence invalid." In the applicant's sworn statement dated December 13, 2005, the following explanation is given in relation to the applicant's admission that, while he had never been taken into custody by a law enforcement officer, he had been ordered to go to jail: "Subject fled Taiwan to avoid paying debts and was convicted of fraud and sentenced, but never captured." The applicant contends that he never sought to evade serving the prison term to which he was sentenced.

The court documents in the record indicate that the applicant fled Taiwan after committing the acts that led to his conviction, but appear to also indicate that he submitted to interrogation prior to the judgment against him in 1983. None of the court documents show that the applicant was outside Taiwan thereafter through July 19, 1989. However, there is ample evidence that the applicant was sentenced to a prison term after being convicted for committing fraud. And there is no evidence that the applicant submitted to the authorities to serve his prison term. There is also no evidence that the applicant paid compensation to those he defrauded. However, there is

also no evidence showing that he was ordered to do so, and the record does indicate that the applicant declared bankruptcy to settle his debts. The record also indicates that the applicant has not committed any criminal acts since his conviction and is a member of church.

The AAO notes that the applicant has the burden of proving that he has been rehabilitated. Although the record reflects that the applicant has not been charged with any crimes since his fraud conviction, it appears from the evidence that he remained outside Taiwan for more than six years to avoid serving his prison sentence. The applicant has submitted evidence showing that he is the member of a church, but this evidence, even when combined with the applicant's statements, is not sufficient to prove his rehabilitation in light of the evidence showing that he fled the jurisdiction in which he was convicted in order to avoid serving his prison sentence.

The AAO now addresses whether the applicant merits a waiver of inadmissibility under section 212(h)(1)(B). The AAO notes that section 212(h)(1)(B) 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, 565-66 (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 to a qualifying relative. The factors include 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

The AAO notes further, however, that 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, 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship.

Moreover, the U.S. Supreme Court 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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 and child face extreme hardship if the applicant is not granted a waiver of inadmissibility.

The only evidence of hardship to the applicant's son submitted by the applicant is his statement that all of his family is sad that he cannot join them in the United States. This statement is not sufficient to meet the applicant's burden of proof. Likewise, there is no evidence that the applicant's son would suffer extreme hardship if he relocated to Taiwan. There is thus insufficient evidence in the record demonstrating that the situation described by the applicant is atypical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

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 failed to establish extreme hardship to his U.S. citizen child as required under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *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.