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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 03 2008

IN RE: [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:



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 that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the United Kingdom who 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 several crimes involving moral turpitude. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his wife and U.S. Citizen stepson.

The service center director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Service Center Director* dated March 23, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in failing to consider all of the factors establishing extreme hardship to the applicant's wife and stepson. Counsel submitted additional evidence with the appeal relating to the applicant's character and the emotional and financial hardship the applicant's wife and stepson would experience if he were removed from the United States. This evidence includes affidavits from the applicant and his wife, psychological evaluations and physician's letters concerning the applicant's wife and stepson, financial documents including tax returns and copies of bills, documents relating to the home the applicant and his wife built, and letters from friends and family members. The entire record was considered in rendering a decision on the appeal.

The record reflects that the service center director found the applicant to be inadmissible because of several convictions of crimes involving moral turpitude in England. *See Decision of the Service Center Director denying the applicant's application for Adjustment of Status (Form I-485)* dated March 23, 2006. These convictions include the following:

- Assault Occasioning Actual Bodily Harm and Criminal Damage, convicted June 5, 1989;
- Assault Occasioning Actual Bodily Harm and Criminal Damage, convicted June 6, 1988;
- Burglary with Intent to Steal, dwelling, convicted March 21, 1986;
- Theft, Obtaining Property by Deception, convicted March 13, 1984;
- Assault Occasioning Actual Bodily Harm, convicted September 19, 1983; and
- Theft from Vehicle, convicted December 21, 1982.

The AAO notes that in addition to the criminal convictions referred to by the service center director in the denial of the I-485 application, the record indicates that the applicant has also been convicted of driving a motor vehicle with excess alcohol and using a vehicle while uninsured, for which he was convicted on February 1, 1998, and fraudulently using a vehicle excise license, for which he was convicted and imposed with a fine on February 24, 1997. The applicant was also convicted of an unspecified crime identified as "handling" on March 11, 1992 and ordered to perform community service.

The AAO notes that over 15 years have passed since the criminal activities referred to in the service center director's decision that rendered the applicant inadmissible. However, the applicant was also convicted of fraudulently using a vehicle excise license in 1997 for conduct that took place on July 29, 1996. Section 44 of the Vehicle Excise and Registration Act 1994 (c. 22) provides, in pertinent part:

44 Forgery and fraud

(1) A person is guilty of an offence if he forges, fraudulently alters, fraudulently uses, fraudulently lends or fraudulently allows to be used by another person anything to which subsection (2) applies.

(2) This subsection applies to—

(a) a vehicle licence,

(b) a trade licence,

...

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or (except in Scotland) to both.

Crimes in which fraud is an essential element have been determined to involve moral turpitude. *Jordan v. DeGeorge*, 341 U.S. 223 (1951). Where fraud is not an essential element of an offense, moral turpitude is not involved absent a finding that the offense is "vile, base or depraved". *Matter of G-*, 7 I&N Dec. 114 (BIA 1956). Fraud against the government or its authority involves moral turpitude even where there is no pecuniary loss to the government. *Matter of S-*, 2 I&N Dec. 225 (BIA 944). Absent a pecuniary loss, fraud against the government has been found where an "important function of a department of the government is impaired or obstructed by defeating its efficiency or destroying the value of its lawful operations" and "fraud" or "intent to defraud" is a necessary element of the offense. *Matter of D-*, 9 I&N Dec. 605 (BIA 1962); *Matter of E-*, 9 I&N Dec. 421 (BIA 1961); *Matter of S-*, *supra*. The fraudulent use of a vehicle excise license, which interferes with the governmental function of registering and collecting duties for motor vehicles used or kept on public roads, is therefore a crime involving moral turpitude, and the applicant's 1997 conviction renders him inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

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:

(h) 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 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 applicant was convicted of several crimes involving moral turpitude, including theft and assault actually occasioning bodily harm, prior to 1990 and was convicted of one crime involving moral turpitude in 1997 for conduct that took place in 1996. 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. *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 addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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.” *Salcido-Salcido v. INS*, 138

F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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-four year-old native and citizen of the United Kingdom who entered the United States on March 21, 2002 under the visa waiver program. The record further reflects that the applicant’s wife is a forty-three year-old native and citizen of the United States. The applicant married his wife on May 9, 2002 and at the time the appeal was filed they were residing together in Columbus, North Carolina with her son, who is now fourteen years old.

Counsel asserts that the applicant’s wife and stepson would experience extreme emotional and financial hardship if the applicant were removed to the United Kingdom because the applicant has helped provide financial and emotional stability in their lives after the abuse the applicant’s wife experienced in past relationships. *Brief in Support of Appeal* at 2. Counsel further states that because the applicant would have to relinquish custody of her son if she chose to relocate to England with the applicant, the resulting separation would constitute extreme hardship to the applicant’s wife. *Brief* at 3. Counsel additionally states that due to their specific circumstances, the loss of the protection, love, and emotional and financial support of the applicant would result in depression and anxiety rising to the level of extreme hardship for the applicant’s wife and stepson. *Brief* at 3. In support of this assertion, counsel refers to affidavits from psychologists and doctors who have treated or evaluated the applicant’s wife and stepson as well as letters from his teachers and school counselor. *Brief* at 4.

Upon a complete review of the evidence on the record, the AAO finds that the applicant has failed to establish that his wife and stepson would experience extreme hardship if he is denied admission to the United States. Records indicate that the applicant’s wife has informed the Department of Homeland Security that the applicant moved out of their home on November 10, 2006 and has been charged with assaulting her. The State of North Carolina confirmed that the applicant has an outstanding arrest warrant on domestic abuse

charges and failed to appear in court on January 28, 2007. Government records further indicate that the applicant departed the United States on March 26, 2007. As the applicant has not resided with his wife and stepson since November 10, 2006, the AAO finds that the record does not support a finding of extreme hardship to either qualifying relative if the applicant is denied admission to the United States. Further, the applicant departed the United States without obtaining Authorization for Parole of an Alien into the United States (advance parole). Departure from the United States while an application for adjustment of status under Section 245 of the Act is pending without first obtaining advance parole shall be deemed an abandonment of the application constituting grounds for termination of the application. 8 C.F.R. § 245.2(a)(4)(ii)(A).

The applicant has failed to establish that the qualifying relatives would suffer extreme hardship if he is denied admission to the United States, and the record further reflects that he has abandoned his application for adjustment of status. Having found that the applicant has abandoned his application for admission and that he is statutorily ineligible for a waiver, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.