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U.S. Citizenship
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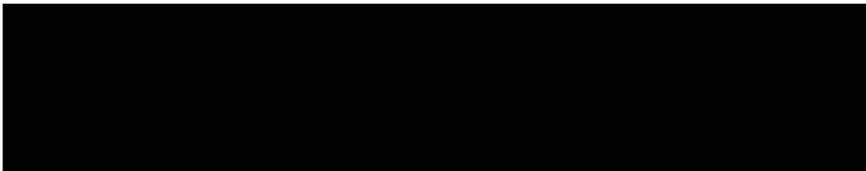
IN RE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 will be denied.

The applicant is a native and citizen of Bulgaria who was admitted into the United States as a refugee on June 24, 1991. The applicant married a U.S. citizen on June 4, 1997. His wife filed a Form I-485, Application to Register Permanent Resident or Adjust Status (Form I-485) on behalf of the applicant on April 29, 2005. 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 two crimes involving moral turpitude. The applicant seeks a waiver of his ground of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director determined the applicant had failed to establish that his wife would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant indicates, through counsel, that the district director erred in not taking into account the applicant's status as a refugee in the United States, and in failing to approve the applicant's I-601 waiver application pursuant to adjudication guidelines for a Form I-602, Application by Refugee for Waiver of Grounds of Inadmissibility (Form I-602) under section 209(c) of the Act, 8 U.S.C. § 1159. The applicant indicates further that his wife will suffer extreme hardship if he is denied admission into the United States, and he asserts that he is eligible for a waiver under section 209(c) of the Act. The applicant submits a completed Form I-602 on appeal. He also submits a copy of an October 31, 2005, Interoffice Memorandum by Michael Aytes, Acting Director of Domestic Operations entitled, "Waivers under Section 209(c) of the Immigration and Nationality Act (AFM Update 05-33) (HQPRD 70/23.10.)

Upon review of the record, the AAO finds that the applicant's I-485 adjustment of status application was clearly filed based on his marriage to a U.S. citizen and approved I-130 petition for alien relative, and not on his admission as a refugee. Submission of a Form I-601 was therefore appropriate, upon discovery that the applicant was inadmissible. The waiver application was, therefore, properly reviewed pursuant to the statutory requirements of section 212(h) of the Act. The AAO notes further that it has no appellate jurisdiction over issues arising under, or related to an I-602 decision under section 209(c) of the Act. *See* 8 C.F.R. 209.1(e). Factors related to a waiver under section 209(c) of the Act will thus not be considered.

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

(i) In general.-Except as provided in clause (ii), any 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 (other than a purely political offense or an attempt or conspiracy to commit such a crime)

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record reflects the following criminal history for the applicant:

January 7, 1993 – Nolo contendere plea to 3rd Degree Grand Theft in Florida. Sentenced to credit for time served (24 days) and costs.

March 7, 2001 – Nolo contendere plea to Petit Larceny / Theft in Florida. Adjudication withheld and fined.

Section 101(a)(48) of the Act, 8 U.S.C. § 1101(a)(48), states that “conviction” means:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The AAO finds, upon review of the evidence, that the applicant was convicted, for immigration purposes, of 3rd Degree Grand Theft on January 7, 1993, and Petit Larceny / Theft on March 7, 2001.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

Florida Statutes 812.014 provides in pertinent part that:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use the property of another with intent to, either temporarily or permanently:

- (a) Deprive the other person of a right to the property or a benefit from the property.
- (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

“[I]t is well-settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude.” *Matter of Scarpulla*, 15 I&N Dec. 139, 140-141 (BIA 1974.) The AAO finds that the applicant was convicted of crimes involving moral turpitude in January 1993 and March 2001.

Because he has been convicted of more than one crime involving moral turpitude, the applicant does not qualify for the petty theft exception contained in section 212(a)(2)(A)(ii)(II) of the Act. The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(1) of the Act.

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

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

(1)(B) [I]n 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.

Section 212(h) 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.

The record reflects that the applicant is married a U.S. citizen. Accordingly, the applicant's wife is a qualifying relative for section 212(h) of the Act extreme hardship purposes.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors that it deemed relevant in determining whether an alien has established extreme hardship. 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, “relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.”

“Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are

insufficient to prove extreme hardship. *See Perez v. INS, supra. See also, Hassan v. INS, 927 F.2d 465, 468 (9th Cir. 1991.)*

The applicant indicates on appeal that his wife will suffer extreme hardship if he is not allowed to remain with her in the United States, or if she moves with him to Bulgaria. To support his assertions, the applicant submits a medical letter from neurologist, [REDACTED]. The record also contains copies of car loan, credit card and joint bank account statements, as well as copies of joint federal tax returns, bills and insurance payments, and photos. The applicant also states generally, through counsel, that the fact that he is a refugee from Bulgaria should be taken into account.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish that his wife would suffer extreme hardship if the applicant's waiver of inadmissibility were denied and she remained in the United States, or if she moved with the applicant to Bulgaria.

The hardship claims made on appeal are vague and lack material detail. Through counsel, the applicant asserts generally that it should be taken into account that the applicant is a refugee from Bulgaria. The applicant makes no other statements regarding the applicant's situation in Bulgaria, and no specific assertions are made regarding why and how the applicant's refugee status would cause extreme hardship to the applicant's wife. In addition, the car loan, credit card, and joint bank account statements, as well as the copies of photos, joint federal tax returns and check payments for insurance and loan bills, are without context, and fail to demonstrate that the applicant's wife would suffer financial hardship beyond that commonly associated with removal if the applicant were denied admission into the United States. The AAO notes further the U.S. Supreme Court holding in *INS v. Jong Ha Wang, 450 U.S. 139 (1981)* that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship."

The AAO finds that the medical letter contained in the record also fails to demonstrate that the applicant's wife would suffer extreme physical or medical hardship if the applicant were denied admission into the United States. The medical letter reflects, in pertinent part that on February 7, 2006, the applicant's wife (Mrs. [REDACTED]) visited neurologist, [REDACTED] for the first time in more than a year. [REDACTED] indicates that he treated [REDACTED] with prescription medicine (Klonopin) a year earlier, for tremors that he believes are psychogenic in origin. He indicates that [REDACTED] is fine physically, and that he found no evidence of involuntary movement or tremors on examination. [REDACTED] states that he believes [REDACTED] tremors are due in large part to her anxiety, and he states that he recommended a psychiatric evaluation during her initial evaluation a year prior. [REDACTED] states that as a temporary measure he will increase [REDACTED]'s daily Klonopin dosage.

The medical letter reflects that the doctor found no evidence of physical ailments, and it appears that prescription medication addresses [REDACTED]'s apparent anxiety-related tremors. The record contains no evidence to indicate that the applicant's wife would be unable to obtain her prescribed medicine in Bulgaria. Furthermore, the record contains no psychological evidence to indicate that the applicant's wife would suffer extreme emotional hardship if the applicant were denied admission into the United States.

Accordingly, the AAO finds that the applicant failed to establish that his wife would suffer hardship beyond that normally expected upon the removal of a family member if she remained in the U.S. without the applicant, or if she moved with him to Bulgaria. Because the applicant failed to establish that his wife would

suffer extreme hardship if he were denied admission into the United States, the AAO notes no purpose in discussing whether the applicant merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.