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U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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HZ

FILE:



Office: LOS ANGELES, CA

Date:

OCT 29 2008

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section
212(h) of the Immigration and Nationality Act (INA), 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Cambodia, 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 been convicted of a crime involving moral turpitude. The record indicates that the applicant has a U.S. citizen son, a lawful permanent resident spouse, a lawful permanent resident daughter and a lawful permanent resident son. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with her family in the United States.

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction for welfare fraud, committed on or about July 2000. The district director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's U.S. citizen son as a result of the applicant's inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated March 9, 2006.

On appeal, the applicant asserts that her U.S. citizen son will face extreme hardship as a result of her inadmissibility because he is only seven years old and she is his caretaker. She also states that her family will face extreme hardship if she is removed. *Form I-290B*, dated March 13, 2006.

The AAO notes that the district director incorrectly found that the applicant's only qualifying relative in her waiver application was her U.S. citizen son. In addition to her U.S. citizen son, the applicant has two lawful permanent resident children and a lawful permanent resident spouse. Hardship to all of these relatives will be considered on appeal.

The record indicates that on July 19, 2000 the applicant was convicted of Welfare Fraud, above \$400, under California Welfare and Institutions Code section 10980(C)(2) and was sentenced to five years probation, 100 hours of community service and was required to pay restitution to Los Angeles County.

California Welfare and Institutions Code section 10980(C)(2) states, in pertinent part:

(c) Whenever any person has, willfully and knowingly, with the intent to deceive, by means of false statement or representation, or by failing to disclose a material fact, or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(2) If the total amount of the aid obtained or retained is more than four hundred dollars (\$400), by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars (\$5,000), or

by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and fine.

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 (other than a purely political offense) 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 record indicates that the applicant was convicted of an offense that was committed in 2000. As her current application for adjustment of status was filed less than 15 years after this offense; she is statutorily

ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. She is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

A section 212(h)(1)(B) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a “qualifying relative,” i.e., the U.S. citizen or lawfully resident spouse, parent or son or daughter of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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). In *Salcido*, the court remanded to the Board of Immigration Appeals (BIA) for failure to consider the factor of separation despite respondent’s testimony that if she were deported her U.S. citizen children would remain in the United States in the care of her mother and spouse. Therefore, separation of family will be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant to Cambodia and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her children and spouse in the event that they relocate with her to Cambodia. The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that he or she remains in the United States separated from the applicant.

The AAO notes that the only claim of hardship in the applicant's case is the statement she makes on the *Notice of Appeal, Form I-290B*, dated March 13, 2006. On her Form I-290B the applicant states that her forced departure would cause extreme hardship to her U.S. citizen son. She asserts that this statement is supported by the evidence that he is only seven years old and unable to feed himself, unable to bathe himself, and unable to attend to his own simple needs. She states that her lawful resident spouse works full time to provide for the family and he relies on her to raise their children correctly. She states that there is no one that is trustworthy and able to watch her son and that after raising her other two children, she feels she is a fit mother and it is her duty and job to raise her children. She asserts that, without a parent who is emotionally and physically there for the child, the child will be pushed in the wrong direction as she has seen happen to other American children who face peer pressure and do not have real parents to set limits. She states that her son needs her more than anything to survive. Therefore, if she is removed, her son and whole family will face extreme hardship. *Id.*

The hardship claimed by the applicant is common to many applicants who have children who require care. There is nothing in the record that shows that this hardship rises to the level of extreme hardship. In addition, the applicant does not make any claims concerning hardship to her other qualifying relatives, her spouse and two other children. Moreover, the applicant provides no evidence regarding the impact that relocating to Cambodia would have on her family and she does not submit any supporting documentation regarding her claim of hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the record fails to establish that any of the applicant's qualifying relatives would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS, supra*, held further 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 who are removed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *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.