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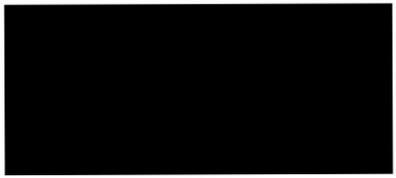
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U.S. Citizenship  
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AUG 03 2009



FILE:



Office: FRANKFURT, GERMANY

Date:

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. section 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.

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

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Frankfurt, Germany. 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 Poland. She was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of Crimes Involving Moral Turpitude (CIMT). The applicant is the child of a naturalized 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 remain in the United States.

The Officer in Charge (OIC) concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 15, 2006.

On appeal, the applicant asserts states that she wishes to be close to her family in the United States.

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, that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

(1) (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 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 reflects that the applicant was convicted of fraud, under Article 286, Section 1 of the Polish Criminal Code, in Zamosc, Poland, on September 20, 2001, June 26, 2002, and April 11, 2003. The Officer in Charge concluded that the applicant had been convicted of Crimes Involving Moral Turpitude (CIMT), and was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). Any crime involving fraud is a CIMT. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966). As such, the applicant has been convicted of three CIMTs. The applicant does not contest these findings.

A waiver of inadmissibility under section 212(h) 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 child of the applicant. Hardship to the applicant is not directly relevant to the determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen mother is the only qualifying relative, as the record fails to establish that the applicant's son, who is living in the United States, is either a U.S. citizen or a lawful permanent resident. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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).

The AAO notes that any evaluation of extreme hardship to a qualifying relative should discuss the impacts on that qualifying relative whether he or she relocates with the applicant or 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 includes, but is not limited to, statements from the applicant's mother and son; school records for the applicant's son; birth certificate for the applicant; a naturalization certificate for the applicant's mother; bank records, tax returns, a letter of employment for the applicant's mother; and translated court records pertaining to the applicant's convictions.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal the applicant's mother states she has been caring for the applicant's oldest son while the applicant pays off debt incurred from two prior marriages, that it is becoming difficult for her to provide for the child's needs as she ages and she needs the applicant to help her out. In his

statement, the applicant's son states that he has not seen his mother in seven years and wants her to be admitted into the United States so that they may reside together.

The AAO acknowledges the statements of the applicant's mother and son, but finds they have not clearly articulated a basis for extreme hardship. Further, the assertions made by the applicant's mother are not documented in the record. There are no medical records that establish that the applicant's mother suffers from any medical conditions that would affect her ability to care for herself or her grandson. Neither is there evidence that the applicant's mother is experiencing financial hardship, e.g., documentation of her inability to pay monthly financial obligations, the presence of significant debt, or poverty level living conditions. While the AAO accepts the applicant's mother's desire to have the applicant admitted to the United States, the record does not establish that the applicant's mother is experiencing any hardships beyond those normally experienced by the relatives of excluded aliens. The AAO also acknowledges that the applicant's son misses his mother, but, as previously noted, he is not a qualifying relative for the purposes of this proceeding and the record fails to demonstrate how his separation from the applicant results in hardship to his grandmother. The documentation submitted is not sufficiently probative to establish that the applicant's mother will experience extreme hardship if she is excluded from the United States.

As previously discussed, a determination of extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. In the present case, the applicant has not addressed how returning to Poland would affect her mother. As such, the AAO is unable to conclude that the applicant's mother would suffer extreme hardship upon relocation.

While the AAO acknowledges that the applicant's mother will experience hardship as a result of the applicant's inadmissibility, 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 that the record does not distinguish the hardship that would be suffered by the applicant's mother from the hardship normally experienced by others whose children have been excluded from the United States, the applicant has failed to establish extreme hardship to her mother under section 212(a)(9)(B)(v) of the Act. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has/has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.