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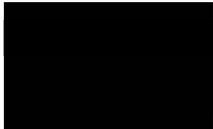
U.S. Citizenship
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FILE:



Office: LOS ANGELES, CA

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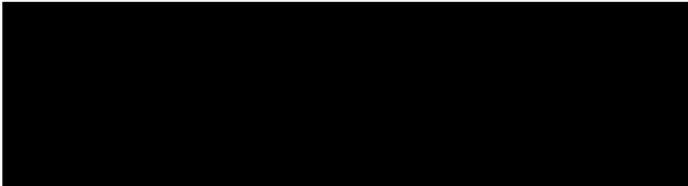
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IN RE:

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:



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 District Director, Los Angeles, California, and is now before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China 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 crimes involving moral turpitude. The applicant is married to a United States citizen and 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 with her spouse.

The district director concluded that the applicant had failed to establish that her qualifying relative would suffer extreme hardship as a result of his inadmissibility. *District Director's Decision*, dated January 13, 2006.

On appeal, counsel asserts that the district director erred in finding that the applicant's two misdemeanor crimes were crimes of moral turpitude. He also asserts that the district director erred in finding that the applicant's spouse would not suffer extreme hardship as a result of her removal. *Form I-290B*, dated February 7, 2006.

The AAO notes that on the Notice of Appeal, Form I-290B, counsel indicates that he will be submitting a brief and or evidence to the AAO within 30 days. *Form I-290B*, dated February 7, 2006. On June 12, 2006, the AAO notified counsel that it had received no additional documentation on appeal and allowed counsel five business days to submit a copy of any documentation previously submitted. No response has been received. Therefore, the current record will be considered the complete record.

The court record shows that the applicant was arrested on June 28, 2000 for Engaging and Agreeing to Engage in Prostitution in violation of section 647(b) of the California Penal Code. She pled "nolo contendere" on October 6, 2000 in the Pomona judicial district and was sentenced to two years probation and ordered to pay a fine of \$200. The applicant was then arrested for a second time on July 27, 2000 for Engaging and Agreeing to Engage in Prostitution in violation of section 647(b) of the California Penal Code. The applicant pled "nolo contendere" on October 23, 2000 in the Long Beach judicial district. She was sentenced to one-year probation and ordered to pay a fine of \$300.00. The AAO notes that practicing prostitution is a crime involving moral turpitude. *See Matter of W-*, 4 I&N Dec. 401 (C.O. 1951).¹

¹ The AAO notes that the Board of Immigration Appeals (BIA) held in *Matter of T*, 6 I&N Dec. 474 (SIO 1954; BIA 1955) that the term "engaged in prostitution" under former section 212(a)(12) means conduct carried on over a period of time and does not extend to a single act of prostitution. In *Matter of Oscar Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 553 (BIA 2008), the BIA further found that a single act of soliciting prostitution does not fall within section 212(a)(2)(D)(ii) of the Act, which bars the admission of an alien who attempts to procure, procures or has procured prostitutes or persons for the purpose of prostitution. In the

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:

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

(1) (A) . . . it is established to the satisfaction of the Attorney General 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 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 offenses that were committed in 2000. Her current application for adjustment of status is less than 15 years after those activities; she is therefore 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.

present matter, however, the applicant has been twice convicted on prostitution charges. Moreover, the applicant has been found inadmissible under section 212(a)(2)(A)(i)(I) of the Act, not section 212(a)(2)(D), and the preceding decisions are not precedent for the purposes of this proceeding.

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 unless it results in hardship to a qualifying relative. 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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

In the present matter, the qualifying relative is the applicant’s spouse. The AAO notes that extreme hardship to the qualifying relative must be established whether he relocates with the applicant to China or remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The hardship documentation in the record consists of a statement from the applicant's spouse. The applicant's spouse states that he loves his wife very much and could not stand being separated from her. *Spouse's Letter*, dated May 17, 2004. He states that it would be a tremendous emotional hardship if she were removed to China. He states further that the applicant's teenage daughter has immigrated to the United State and he cannot raise, nurture and support her without her mother's assistance. *Id.* The AAO notes that 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)). Without further documentation and detailed statements that he will suffer emotional hardship without the applicant, the applicant's spouse's statement does not meet the burden of proof for this application.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by 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.

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.