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U.S. Citizenship
and Immigration
Services

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FILE:



Office: DETROIT, MICHIGAN

Date: JAN 23 2009

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.

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 or reopen, 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, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of India and a citizen of Canada 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 record indicates that the applicant is married to a lawful permanent resident of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her lawful permanent resident spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 12, 2005.

On appeal, the applicant, through counsel, asserts that the applicant's husband would suffer extreme hardship if the applicant were removed from the United States." *Attorney's letter attached to Form I-290B*, filed January 17, 2006.

The record includes, but is not limited to, counsel's letter, affidavits from the applicant's husband, numerous medical documents regarding the applicant's medical condition, and the criminal court dispositions for the applicant's arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on June 12, 2001, the applicant was convicted of retail fraud, sentenced to one year probation, and ordered to pay court costs and fines. On July 3, 2002, the applicant's probation was discharged for her June 12, 2001 conviction. On May 27, 2003, the applicant was convicted of retail fraud in the second degree, sentenced to one year probation, and ordered to pay court costs and fines. On May 19, 2004, the applicant's probation was discharged for her May 27, 2003 conviction. On March 21, 2005, the applicant was convicted of retail fraud in the second degree, and was ordered to complete a life adjustment program and pay court fees and fines. On January 13, 2006, the applicant's probation was discharged for her March 21, 2005 conviction.

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:

The Attorney General [Secretary of Homeland Security, "Secretary"] 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 [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 [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 entered the United States on January 28, 2001 on an H-4 nonimmigrant visa. On June 12, 2001, the applicant was convicted of retail fraud, sentenced to one year probation, and ordered to pay court costs and fines. On July 3, 2002, the applicant's probation was discharged for her June 12, 2001 conviction. On October 5, 2001, the applicant's husband's Petition for Alien Worker (Form I-140) was approved. On January 14, 2002, the applicant departed the United States and reentered on January 15, 2002. On February 21, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On May 27, 2003, the applicant was convicted of retail fraud in the second degree, sentenced to one year probation, and ordered to pay court costs and fines. On an unknown date, the applicant departed the United States and reentered on February 18, 2004. On May 19, 2004, the applicant's probation was discharged for her May 27, 2003 conviction. On March 21, 2005, the applicant was convicted of retail fraud in the second degree, and was ordered to complete a life adjustment program and pay court fees and fines. On September 20, 2005, the applicant filed a Form I-601. On December 12, 2005, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relatives. On January 13, 2006, the applicant's probation was discharged for her March 21, 2005 conviction.

The AAO notes that robbery and theft offenses are considered crimes involving moral turpitude. See *Matter of Carballé*, 19 I&N Dec. 357 (BIA 1986); see also *Matter of Martin*, 18 I&N Dec. 226 (BIA 1982); *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966); *Chen v. INS*, 87 F.3d 5 (1st Cir. 1996).

Additionally, counsel has not disputed that the applicant's convictions are for crimes involving moral turpitude or that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien herself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse and children. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's spouse "is the sole caretaker of [the applicant] and it would be more than an extreme hardship for him to care for [the applicant] by long distance and simultaneously satisfy his obligations to his children and employer." *Attorney's letter attached to Form I-290B, supra*. The AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Canada or India. Additionally, the AAO notes that the applicant's husband is a native of India and he has not established that he has no family ties to Canada or India. Counsel claims that the applicant's husband is "barely able to cope at present with his family intact." *Id.* The AAO notes that there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety or whether any depression and anxiety is beyond that experienced by others in the same situation. Counsel states the children will suffer extreme hardship if they relocate to be with the applicant. *Id.* The applicant's husband states that if the applicant "is made to leave the country, [their] children have to leave who lived here for all there [sic] life, this will have a devastating impact on them." *Letter from [REDACTED], dated December 20, 2007*. The AAO notes that that the applicant's oldest child is a native and citizen of Canada. Additionally, it has not been established that the applicant's United States citizen children, who are 2 and 7 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Canada or India. Furthermore, the AAO notes that the applicant's youngest child resides in India with the applicant's mother-in-law. See *letter from attorney, dated September 23, 2008*.

The AAO notes that in 2005 the applicant was diagnosed with breast cancer. *See letter from* [REDACTED], dated September 19, 2005. [REDACTED] states that after the applicant's neoadjuvant chemotherapy, there was "a near complete resolution of [the] right breast cancer." *Letter from* [REDACTED], *Associates in General & Vascular Surgery*, dated January 12, 2006. [REDACTED] recommends that the applicant stay in Michigan for her treatment and follow up. *Id.* [REDACTED] states the applicant "does remain at risk of recurrence of cancer, and long-term follow-up is very important. She needs to continue to have mammograms on a regular basis, and she needs regular physician follow-up as well." *Letter from* [REDACTED], dated October 4, 2007. The AAO notes that there was no documentation submitted establishing that the applicant could not receive treatment for her breast cancer in Canada or India or that she has to remain in the United States to receive treatments. Counsel states that an interruption in the applicant's "treatment will negatively impact her chances for recovery and elevate the risk that her LPR and USC children will lose [the applicant]." *Attorney's letter attached to Form I-290B, supra.* The AAO notes that there may be some hardship associated with the applicant relocating to Canada or India and finding new doctors; however, as stated above, hardship the alien herself experiences upon removal is irrelevant to section 212(h) waiver proceedings.

Regarding the applicant's criminal activities, the applicant's husband states the applicant "had made the mistake and she is very ashamed of her acts." *Letter from* [REDACTED] *supra.* [REDACTED] diagnosed the applicant with Dsythymic Disorder and Kleptomania. *Letter from* [REDACTED] *MSW, LMSW, Clinical Therapist, Hegira-Westland Counseling Center*, dated August 10, 2005. [REDACTED] diagnosed the applicant with adjustment disorder with depressed mood. *See letter from* [REDACTED] dated December 6, 2005. [REDACTED] stated the applicant "may require treatment for depression from time to time.... It is [his] opinion that [the applicant] will be a law-abiding citizen and [he] believe[s] the shoplifting will not recur." *Id.* The AAO finds that the applicant failed to establish that her family would suffer extreme hardship if they accompany her to Canada or India.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and businesses. Counsel states that the applicant's United States citizen children "[have] an absolute right to remain in the United States." *Attorney's letter attached to Form I-290B, supra.* As lawful permanent residents of the United States and United States citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states he "would become a single parent, having a stranger look after [his] children during the hours [he] [is] at work." *Affidavit from* [REDACTED] dated January 13, 2006. The AAO notes that it has not been established that the applicant's spouse will be unable to provide or obtain adequate care for his children in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Additionally, the AAO notes that the applicant is a college graduate, and the record fails to demonstrate that the applicant cannot obtain employment in Canada or India, or that she will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the

mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 being deported. The AAO recognizes that the applicant's spouse and children will endure hardship as a result of separation from the applicant. However, their situation if they remain in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's family 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(a)(2)(A) 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.