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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

H2

FILE: [REDACTED] Office: PHILADELPHIA, PA

Date: JUL 01 2009

IN RE: [REDACTED]

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:

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).

A handwritten signature in cursive script, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania. 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 Russia. 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 a Crime Involving Moral Turpitude (CIMT). The applicant is the wife of a 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 Acting District Director 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 May 30, 2006.

On appeal, counsel asserts that sufficient evidence has been provided to establish that the applicant's qualifying relatives, her spouse and stepson,¹ would suffer extreme hardship if the applicant were excluded from 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 admitted to sufficient facts to support the charges of Receiving Stolen Property less than \$250, Title I, Chapter 266/60 of the General Laws of Massachusetts, two counts of Receiving Stolen Property more than \$250, Title I, Chapter 266/60 of the General Laws of Massachusetts, in the Natrick, Massachusetts District Court, and Larceny under \$250 by False

¹ The AAO notes that the record contains no documentation to establish the relationship between the applicant's spouse and his son.

Pretense, Title I, Chapter 266/34 of the General Laws of Massachusetts in Lynn, Massachusetts District Court. The Director concluded that the applicant had been convicted of a Crime 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).

On appeal counsel points out that the applicant only admitted to sufficient facts in relation to her charges, did not have knowledge that the goods were stolen, and thus was not convicted of a CIMT. The AAO notes that “conviction” for immigration purposes is defined in section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), as:

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.

In this case, court dispositions submitted into the record show that the applicant admitted to sufficient facts for the listed crimes and was given probation. Accordingly, the record establishes the applicant’s convictions for immigration purposes. Moreover, the AAO notes that the language of Title I, Chapter 266/60 of the General Laws of Massachusetts requires the knowing receipt of stolen property. Knowingly receiving stolen property is categorically a CIMT, *Matter of Patel*, 15 I&N Dec. 212 (BIA 1975). Larceny is also a CIMT, *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966). As such, the applicant has been convicted of multiple CIMTs and is inadmissible pursuant to section 212(a)(2)(A)(i)(I).

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 spouse is the only qualifying relative. 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 extreme hardship to a qualifying relative must be established 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 the following relevant evidence: statements from the applicant, her spouse and family members; a psychological evaluation by [REDACTED]; photographs of the applicant and her spouse; the section on Russia in the U.S. Department of State's Country Reports on Human Rights Practices – 2005, March 8, 2005; and a copy of the World Bank's Russian Federation Country Brief, 2006.

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

On appeal counsel asserts that the applicant's spouse is suffering from depression related to applicant's immigration status, and cites to a psychological report from [REDACTED]. In his report, [REDACTED] finds the applicant's spouse to have Adjustment Disorder with Mixed Anxiety and Depressed Mood, and that his depression symptomology would be exacerbated if he and the applicant are separated. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview with the applicant's spouse. As the conclusions reached in the submitted evaluation are based on a single interview, the AAO does not find them to reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the evaluation speculative and diminishing its value to a determination of extreme hardship.

The applicant's spouse asserts in his statements that if his wife were removed to Russia and he remained in the United States that he would be devastated and lost. While the AAO acknowledges that the applicant's spouse will suffer emotional hardship as a result of his wife's exclusion, and that he will have to make adjustments, the record, as noted above, does not establish that his hardship rises above that normally experienced by the relatives of excluded aliens. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996)(holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute an extreme hardship). Thus, the record does not establish that the impact of separation on the applicant's spouse rises to the level of extreme hardship in the event the applicant is excluded and he remains in the United States.

As noted above, extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In this case, the applicant's spouse asserts that he has never been to Russia, does not speak the language and would have difficulty finding a job. He also asserts that he

would not be able to visit his parents whose health has declined and who intend to join him in Pennsylvania, or reside with his son who intends to attend college in Pennsylvania.

Although the record does not support all of the applicant's assertions, the AAO finds the applicant's spouse's significant family and community ties to the United States, his inability to speak Russian, the limitation on his employability as a result of his lack of Russian language skills, and his unfamiliarity with Russia, when considered in the aggregate, to establish that he would suffer extreme hardship if he were to relocate to Russia with the applicant.

However, as the record does not also demonstrate extreme hardship to the applicant's spouse if he remains in the United States, it does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. 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 spouse from the hardship normally experienced by others whose spouses have been excluded from the United States, the applicant has failed to establish extreme hardship to her U.S. citizen spouse 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.