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

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FILE: [REDACTED] Office: VIENNA

Date: JUL 27 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. § 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 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 Officer-in-Charge, Vienna, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Kosovo and citizen of Albania who 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 applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to enter the United States and reside with his U.S. citizen wife.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated December 6, 2006.

On appeal, the applicant asserts that his wife is experiencing hardship due to his absence from the United States. *Statement from the Applicant*, dated February 1, 2007.

The record contains statements from the applicant and the applicant's wife; medical documentation for the applicant's wife; documentation regarding the applicant's business; a letter reflecting that the applicant has a bank account; a letter regarding the applicant's participation with Boy Scouts and other volunteer activities; a copy of the applicant's wife's passport, and; documentation relating to the applicant's criminal conviction. The applicant provided a document in a foreign language without a translation into English. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

- (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 [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . 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
  
- (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 [now the Secretary of Homeland Security (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 reflects that on March 9, 2005 the applicant was convicted in a Municipal Court for Minor Offenses in Kosovo for beating another man on the arm and face with a tire wrench on March 21, 2004. The applicant was assessed a fine in lieu of imprisonment, yet he faced a maximum sentence of five years of incarceration for the offense. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. There is ample support that his actions constitute a crime involving moral turpitude. See *Nguyen v. Reno*, 211 F.3d 692, 694-95 (1<sup>st</sup> Cir. 2000); *Matter of Logan*, 17 I&N Dec. 367 (BIA 1980). He does not contest his inadmissibility on appeal.

It is noted that the applicant is not eligible to be considered for a waiver under the standard set in section 212(h)(1)(A) of the Act, as 15 years have not passed since he committed the conduct that led to his conviction. Section 212(h)(1)(A)(i) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship the applicant experiences due to his inadmissibility is not a basis for a waiver under section 212(h) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen wife. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

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

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).

On appeal, the applicant asserts that his wife is experiencing hardship due to his absence from the United States. *Statement from the Applicant*, dated February 1, 2007. The applicant states that he and his wife were married on January 27, 2005. *Id.* at 1. He explains that his wife had a miscarriage. *Id.* He notes that he operates an internet café located in the town of Gjakove, Kosovo, and that he has a bank account there. *Id.* He explains that his wife ceased her nursing studies at UWM University in Milwaukee. *Id.* The applicant states that his wife has been residing with him abroad but that she intended to return to the United States on January 24, 2007. *Id.* He asserts that it will be difficult for him and his wife to live apart. *Id.*

The applicant's wife stated that she is overwhelmed by sadness and disappointment regarding the applicant's immigration difficulties. *Statement from the Applicant's Wife*, undated. She asserted that she was compelled to give up her nursing studies due to her desire to be with the applicant in Kosovo. *Id.* at 1.

Upon review, the applicant has not shown that his wife will suffer extreme hardship should he be prohibited from entering the United States. The applicant has not shown that his wife will experience extreme hardship should she continue to reside in Kosovo with him. While the applicant and his wife asserted that his wife discontinued her nursing studies to stay abroad with him, the applicant has not asserted or shown that his wife is unable to continue nursing studies in Kosovo. The applicant has not indicated that his wife will endure other elements of hardship should she remain in Kosovo to maintain family unity. It is noted that the applicant presented evidence to show that he operates a business in Gjakove, thus it appears that he and his wife would have economic resources there. The applicant bears the burden of showing that his wife will experience extreme hardship if the waiver application is denied. In the absence of clear assertions from the applicant, the AAO may not speculate as to hardships the applicant's wife may face. Based on the foregoing, the applicant has not shown that his wife will suffer extreme hardship should she remain outside the United States.

The applicant has not established that his wife will encounter extreme hardship should she reside in the United States without him. The applicant's wife explained that she wishes to reside with the applicant. While the AAO acknowledges that family separation often involves considerable emotional consequences, the applicant has not distinguished his wife's hardship from that which is

commonly expected when family members are separated due to inadmissibility. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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 being deported.

Accordingly, the applicant has not submitted sufficient evidence to show by a preponderance of the evidence that his wife will experience extreme hardship should she reside in the United States without him.

Based on the foregoing, the applicant has not shown that denial of the present waiver application would result in extreme hardship to his wife. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.