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U.S. Citizenship
and Immigration
Services

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MAR 03 2001

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

PETITION: 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 PETITIONER:

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).

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 Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Sri Lanka 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 a crime involving moral turpitude. The applicant is the spouse of a United States citizen. He now seeks a waiver of inadmissibility so that he may reside in the United States with his spouse.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly.¹ *Decision of the Director*, dated April 13, 2006.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver. *Form I-290B; Attorney's brief*.

In support of the applicant's claim to extreme hardship, counsel submits two briefs. The record also includes, but is not limited to published country conditions reports; a psychological evaluation; criminal records; a medical letter for the applicant's spouse; bank statements; health insurance claims; dental bills; a car insurance policy card; employment letters for the applicant and his spouse; tax statements for the applicant and his spouse; W-2 Forms for the applicant's spouse; a statement from the applicant's spouse; a photograph of the applicant and his spouse; earnings statements for the applicant; and utility and credit card bills. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On April 30, 1996 the applicant pled guilty in Ohio to three counts of theft and one count of misuse of credit cards. *Criminal records, Appearance and Execution Criminal Docket, State of Ohio*. The applicant was sentenced to six months in jail, one year probation, and had to pay fines. *Cuyahoga County Court of Common Pleas, Criminal Division, Sentencing Journal Entry Form*, dated May 28, 1996. In *Matter of Grazley*, the Board of Immigration Appeals found that ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. 14 I. & N. Dec. 330 (BIA 1973). The AAO notes that the Ohio Statute § 2913.02 under which the applicant was found guilty specifically defines

¹ The Director incorrectly indicated that he was considering the applicant's waiver application under section 212(a)(9)(B)(v), rather than section 212(h) of the Act. The AAO notes that section 212(a)(9)(B)(v) of the Act provides a waiver for an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, while section 212(h) of the Act provides a waiver for 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. The AAO notes, however, that both waivers require the applicant to establish extreme hardship to a qualifying relative and that the applicant's spouse would be considered a qualifying relative in either proceeding.

“theft” as having the “purpose to deprive.” Ohio Statute § 2913.01 defines “deprive” as any of the following:

- 1) Withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;
- 2) Dispose of property so as to make it unlikely that the owner will recover it;
- (3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.

The AAO finds that the Ohio Statute is not divisible, as a permanent taking is intended. As such, the applicant has been convicted of a crime involving moral turpitude.

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:

- (h) The Attorney General [Secretary of Homeland Security] 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 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
 - (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 [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 . . .

Section 212(h) 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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A) 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. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's qualifying relative must be established whether she resides in Sri Lanka or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Sri Lanka, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *United States passport for the applicant's spouse*. She notes that apart from the applicant, she has no one in the United States with whom she has close emotional ties. *Statement from the applicant's spouse*, dated April 14, 2004. Her parents are deceased and she has no children. *Id.* She has one brother with whom she is estranged. *Id.* She is unable to read, write, or speak the Sinhalese language, the official language of Sri Lanka. *Id.* As the applicant left Sri Lanka when he was four years old, he never learned the language and would be unable to assist his spouse in learning the language and adjusting to the culture. *Id.* Counsel asserts that Sri Lanka is a dangerous place. *Attorney's brief*. Published country conditions reports submitted into the record support such assertions, noting that numerous reports that armed paramilitary groups, suspected of being linked to the government or security forces, participated in armed attacks during the year. *Sri Lanka, Country*

Reports on Human Rights Practices – 2005, United States Department of State, dated March 8, 2006. The AAO also notes that the United States Department of State has issued a travel warning for United States citizens traveling to Sri Lanka. *Travel Warning - Sri Lanka, United States Department of State, Bureau of Consular Affairs*, dated December 22, 2008. When looking at the aforementioned factors, particularly the applicant's spouse's lack of family and cultural ties to Sri Lanka, her inability to speak the official language, and country conditions as documented by published reports, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Sri Lanka.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse does not have any close family ties in the United States. *Statement from the applicant's spouse*, dated April 14, 2004. According to an evaluation prepared by two psychologists, the applicant's spouse has suffered a number of losses in her life. *Psychological report*, [REDACTED] and [REDACTED], dated May 2, 2006. She has lost both of her parents after taking care of them, her fiancé died of a heart attack, a friend died in a plane crash, and now she is concerned about the potential loss of her husband. *Id.* The applicant's spouse states that to be separated from the applicant would cause her great turmoil and stress. *Statement from the applicant's spouse*, dated April 14, 2004. While the AAO acknowledges this statement, it observes that the psychological evaluation finds that the applicant appears free of any major emotional or psychological distress and does not appear to be suffering from any anxiety related symptoms. *Psychological report*, [REDACTED] and [REDACTED], dated May 2, 2006. One of the psychologists noted that the applicant's spouse had stated that perhaps she should have overstated her emotional condition in order to prevent the loss of her marriage, but that she had not done so. *Id.* The evaluation reports that the applicant's spouse views herself as a survivor. *Id.* Both psychologists indicate that the applicant's spouse is under stress and anxious, but is a resilient individual. *Id.* They also note that it is never possible to forecast at just what point an individual's capacity to sustain a "body blow" will prove too much for coping mechanisms, but do not elaborate beyond this statement. *Id.* While the AAO acknowledges that the applicant's spouse has suffered numerous losses in her lifetime and that being separated from the applicant would constitute an additional loss, it notes that the psychological evaluation fails to conclude that the impact of the applicant's removal from the United States would result in emotional hardship that is beyond what is experienced by other individuals separated as a result of removal. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States following his removal.

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 an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.