

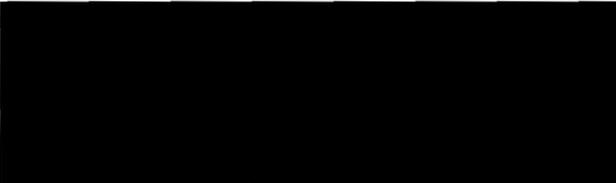


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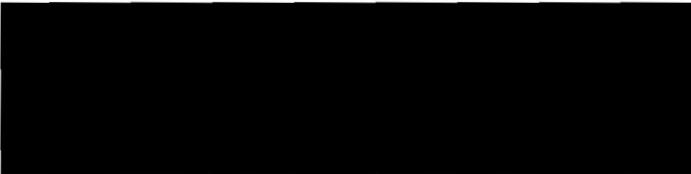
**MAR 06 2009**

IN RE:



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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran 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 crimes 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 remain in the United States and reside with his U.S. citizen wife and children.

The district director 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 District Director*, dated August 18, 2006.

On appeal, counsel for the applicant asserts that the applicant has shown that his wife and children will experience extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated September 18, 2006. Counsel asserts that the district director failed to consider the supporting documentation provided by the applicant. *Id.* at 1.

The record contains a statement from counsel on Form I-290B; a statement from the applicant's wife; a psychological evaluation for the applicant's family; a copy of the applicant's passport; a copy of the applicant's marriage certificate; a copy of the applicant's wife's naturalization certificate; copies of the applicant's children's birth certificates; tax records for the applicant, and; documentation relating to the applicant's criminal convictions. 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:

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)

- (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 September 15, 1999 the applicant was convicted of four felonies, including: two counts of receiving/buying stolen property under California Penal Code § 496(B); altering/defacing a vehicle identification number to sell or transfer under California Vehicle Code § 10802, and; owning/operating a “chop shop” under California Vehicle Code § 10801. He was sentenced to serve 364 days in the Los Angeles County jail. 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 crimes involving moral turpitude. 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 convictions. 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 and children. *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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[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.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s wife and children would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

On appeal, counsel asserts that the applicant has shown that his wife and children will experience extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B* at 1. Counsel contends that the district director failed to consider the supporting documentation provided by the applicant. *Id.*

The record shows that the applicant’s wife and the applicant have been married since 1993, and they have two U.S. citizen sons, now aged 9 and 14. In a statement dated November 26, 2002, she stated that the applicant has been a good provider for their family, and that he owns an auto body and dismantling service. *Id.* at 1. She indicated that she works part-time at a department store. *Id.* She noted that the applicant’s parents reside with them, and that her parents reside nearby. *Id.* She stated that the applicant has other relatives in the Los Angeles area, including a sister, uncles, aunts, nieces, and nephews. *Id.* She explained that the applicant has a close family in the United States, yet he has no family in Iran. *Id.* at 1-2.

The applicant’s wife stated that she and the applicant are Armenian Christians, and that they would face persecution in Iran as a result. *Id.* at 2. She asserted that she could not take the applicant’s children to Iran as they are U.S. citizens and deserve to live with freedom and democracy. *Id.* She stated that separating the applicant from her and their children constitutes a severe punishment. *Id.*

The applicant submitted a report discussing him and his wife from [REDACTED] a clinical psychologist. [REDACTED] indicated that he generated the report after a two-hour session with the applicant and the applicant’s wife. *Report from [REDACTED]*, dated November 27, 2002. Dr. [REDACTED] described the applicant’s history. *Id.* at 1-2. [REDACTED] recounted facts about Christians residing in Iran as he learned from the applicant and the applicant’s wife. *Id.* at 2-3. [REDACTED] stated that the applicant’s children would be at a higher risk for emotional and behavioral problems should



represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The report from [REDACTED] primarily focuses on the applicant's history and hardship. Yet, he discussed conditions in Iran and possible hardship to the applicant's wife. The report was based on a single session, thus it does not constitute treatment for a mental health problem or an ongoing relationship with a mental health professional. It is noted that [REDACTED] **did not establish an independent basis for his knowledge of conditions in Iran, thus the report suggests that he was limited to recounting information provided by the applicant and the applicant's wife.** While the report is helpful for an understanding of the applicant's background and challenges, it is not sufficient to show that the applicant's wife would experience emotional hardship or other challenges that rise to the level of extreme hardship.

The applicant did not assert or show that his wife would experience economic challenges should he be compelled to depart the United States, whether she remains or relocates with him.

It is observed that the applicant's wife is a native of Iran. Therefore, it is evident that she would not be faced with the challenges of adapting to an unfamiliar language and culture should she return there. As discussed above, the AAO appreciates the challenges of residing in Iran. Yet, the applicant has not shown that his wife would encounter extreme hardship there, such that denial of the present application would require family separation.

Based on the foregoing, the applicant has not shown that denial of the present waiver application would result in extreme hardship to his wife or his children. 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.