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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: BANGKOK

Date: **MAR 19 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 PETITIONER:

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of South Korea. He 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 (swindling) for which he was sentenced to imprisonment for one year and six months. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to travel to the United States to reside with his spouse and stepson.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated January 5, 2007.

On appeal, the applicant asserts that denial of the waiver would result in extreme hardship to his U.S. citizen wife and stepson. Specifically, he states that the separation had caused his wife and stepson great pain and he requests that the waiver application be granted so that they can live together as a family. *See Notice of Appeal to the AAO* (Form I-290B). The applicant submitted a letter from himself and one from his wife in support of the waiver application. The entire record was reviewed and considered in arriving at a decision on the appeal.

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) states in pertinent part:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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 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 was convicted by Kwangjoo District Court on January 8, 2003 of swindling and violation of the Credit Export Financing Business Law and sentenced to one year and six months imprisonment. The criminal conduct took place in 2002, and since less than 15 years has passed since the criminal activity for which he was convicted, the applicant is statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) 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.

U.S. court decisions have additionally 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 BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty-eight year-old native and citizen of South Korea who currently resides in Anyang City, South Korea and has never entered the United States. The record further reflects that the applicant's wife is a thirty-eight year-old native of South Korea and U.S. Citizen. At the time the waiver application was filed, the applicant's wife and stepson were residing in South Korea with the applicant.

The applicant claims that if he is refused admission to the United States, the separation would cause his wife and stepson emotional hardship. He states that their family is happy residing together now, and to live apart would cause them pain and sorrow. *See undated letter from [REDACTED]*. The Applicant's wife states that she and her son began a new life when they met the applicant and they are happy together. She states that it would cause her son **great hardship** if they have to return to the United States without the applicant. *See undated letter from [REDACTED]*

The applicant claims that if he is denied admission to the United States, the separation would cause his wife and stepson to suffer extreme emotional hardship. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with a spouse or parent's deportation or exclusion. Although the depth of their distress over the prospect of being separated from the applicant is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The applicant did not submit any documentation to support an assertion that denying him admission to the United States would cause his wife or stepson to suffer extreme hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The emotional and financial hardship the applicant's wife and stepson would experience if he is denied admission and they return to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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 extreme hardship). Further, no evidence was submitted to support a claim that the applicant's wife or stepson would suffer extreme hardship if they remained in South Korea. Therefore, the AAO cannot make a determination of whether the applicant's family members would suffer extreme hardship if they remained there.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse or stepson as required under section 212(h) of the Act.

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. 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.