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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: DALLAS, TEXAS

Date:

MAR 20 2009

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of India 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 one or more crimes involving moral turpitude. The applicant is the spouse of a United States citizen and the father of two United States citizen children. Though they do not reside with him, he is also the step-father of two additional United States citizen children. He now seeks a waiver of inadmissibility so that he may reside in the United States with his spouse and children.

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. *Decision of the Director*, dated November 30, 2006.

On appeal, counsel submits a brief in which she 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 relatives, his wife and children, as necessary for a waiver. The applicant also submits new evidence in support of his appeal. *Form I-290B*, dated December 26, 2006; *Attorney's brief*, undated; *Evaluation from* [REDACTED] dated January 16, 2007.

In support of the claim to extreme hardship, counsel submits the previously noted brief and additional evidence. The record also includes, but is not limited to the following evidence that is relevant to the applicant's claim: criminal court documents; a statement from the applicant's spouse; an evaluation from [REDACTED]; tax statements for the applicant and his spouse; W-2 Forms for the applicant and his spouse; the applicant's marriage license; birth certificates for the applicant's spouse and two of her children; family photographs; affidavits of support; and a final decree of divorce, which outlines the custody agreement between the applicant's spouse and her former husband regarding their two children. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On February 5, 2004 the applicant was found guilty in Texas of one count of *Intentionally or Knowingly Causing Bodily Harm by Aggravated Use of a Deadly Weapon, a pipe*, a second degree felony. *Unadjudicated Judgment on Plea of Guilty or Nolo Contendere and Suspending Imposition of Sentence*, dated February 5, 2004. He was placed on probation for four years as a result of this conviction. *Id.* Also on February 5, 2004, the applicant was found guilty in Texas of one count of *Engaging in Organized Criminal Activity: theft over \$200,000*, a felony in the first degree. *Unadjudicated Judgment on Plea of Guilty or Nolo Contendere and Suspending Imposition of Sentence*, dated February 5, 2004. He was placed on probation for ten years and was fined five thousand dollars as a result of this conviction. *Id.* The AAO notes that the aggravated assault with a deadly weapon is a crime involving moral turpitude. *Matter of O-*, 3 I. & N. Dec. 193 (BIA 1948); *Guillen-Garcia v. INS*, 999 F.2d 199 (7th Cir. 1993). Accordingly, the AAO finds that the applicant's conviction for aggravated assault with a deadly

weapon is a conviction of a crime involving moral turpitude and renders him inadmissible under section 212(a)(2)(A) of the Act. It is noted that the applicant filed a Form I-485 on April 25, 2005, which was less than 15 years after his February 5, 2004 convictions.

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 . . .

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 and children 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 relatives must be established whether they reside in India or the United States, as they are 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.

The applicant needs to establish that his spouse and/or his children would suffer extreme hardship if there were to travel with him to India. The applicant's spouse and two children are all natives and citizens of the United States. *Birth certificates*. The record indicates that the applicant's spouse has not ever resided outside of the United States and that she and her children with the applicant only speak English. *Attorney's brief*, undated. The record also indicates that neither the applicant's spouse nor their children have ever visited India. *Id.* The applicant's spouse's immediate family, including two additional children from a prior marriage, also reside in the United States. *Evaluation of [REDACTED]*, dated January 16, 2007. The applicant's spouse does not have relatives in India other than her mother-in-law, who she has never met. *Id.* The applicant's wife's final decree of divorce specifies that though her former spouse retains primary physical custody of her two children from her marriage to him, she and her former spouse have joint custody of those two children. *Final Decree of Divorce In the Matter of the Marriage of [REDACTED] and [REDACTED]*, undated. The record further states that the neither the applicant's spouse nor her former husband are to remove those children from the United States and that those children's primary residence is to be in Tarrant County, Texas. To amend this specification would require a court order signed by both the applicant's spouse and her former husband. *Id.* Page 7. Because the divorce decree specifies that the applicant's two children from her first marriage are not to reside or otherwise be removed from the United States, if the applicant's spouse were to reside in India, she would effectively be separated from her two eldest children. Because the applicant's spouse has never resided outside of the United States, only speaks English, and most notably because moving to India would effectively separate her from her two children from her first marriage, the evidence in the record is sufficient to establish that the applicant's spouse would experience extreme hardship if she were to relocate to India to reside with the applicant.

Although counsel offers evidence of extreme hardship to the applicant's wife if she relocates to India, counsel does not establish extreme hardship to the applicant's spouse if she remains in the

United States. The applicant's spouse is currently a stay-at home-mom who does not work outside the home. *Statement from the applicant's spouse*, dated December 28, 2005; *Statement from the applicant*, dated January 3, 2006; *Tax statements and Forms W-2 for the applicant and his spouse*. Therefore, without the income of her husband, the applicant cannot support her household. *Id.* It is noted that in addition to her financial responsibilities regarding caring for the two children that she has with the applicant, the applicant's spouse was ordered to pay her former spouse \$325.00 a month for child support. *Final Decree of Divorce*, page 15, undated. However, the applicant has not provided evidence that he would be unable or unwilling to obtain employment in India to support his spouse and children, nor has he submitted evidence that his spouse would be unable to support the family if she were to obtain employment in the United States.

The applicant has also submitted an evaluation from [REDACTED] who states that the applicant's spouse has been diagnosed with an Antisocial Personality Disorder and that she will likely suffer extreme hardship if she is separated from the applicant. *Evaluation of [REDACTED]* dated January 16, 2007. The record indicates that this diagnosis was made after a three hour interview on December 15, 2006 followed by a personality assessment inventory on December 19, 2006 and interviews with two individuals regarding the applicant's spouse. While this evaluation makes clear that the applicant's spouse has had a very difficult life and enjoys little to no support from her immediate family in the United States, the record does not indicate that the applicant's spouse is currently undergoing a course of treatment for her diagnosed condition or that there continues to be an ongoing relationship with [REDACTED]

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on one psychological test and a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the personality disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Although counsel offers evidence of extreme hardship to the applicant's wife if she relocates to India, counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States except to state that it will cause emotional distress and financial hardship. *Attorney's brief*, undated. The AAO acknowledges that the applicant and his spouse may be required to alter their living arrangements as a result of the applicant's inadmissibility. The record, however, does not contain evidence that the applicant's spouse will be unable to maintain her financial situation if the applicant departs from the United States. Moreover, the U.S. Supreme Court 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 AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship

based on the record. U.S. court decisions have repeatedly 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, *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 (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. *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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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 applications for waiver of grounds of inadmissibility under sections 212(h) and (i), the burden of establishing that the application merits approval remains entirely with the applicant. *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.