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



**U.S. Citizenship
and Immigration
Services**

H2

[REDACTED]

FILE: [REDACTED] Office: BALTIMORE

Date:

JUN 22 2010

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).

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Latvia 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 with his U.S. citizen wife.

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 December 4, 2007.

On appeal, the applicant asserts that he has shown that his wife will experience extreme hardship should the present waiver application be denied. *Statement from the Applicant on Form I-290B*, dated January 1, 2008. The applicant further asserts that the district director made an erroneous statement of law regarding the extreme hardship standard in section 212(h) of the Act. *Id.* at 2.

The record contains a statement from the applicant's wife; a report on the applicant's wife's mental health; copies of birth records for the applicant and his wife; copies of tax and business documents for the applicant and his wife; a copy of the applicant's marriage certificate, 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 parts:

(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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record shows that on October 1, 1999 the applicant was convicted of Theft: Less \$300 Value, under former Maryland Code Article 27 § 342. A conviction under former Maryland Code Article 27 § 342 carried a maximum sentence of 18 months of incarceration, and the applicant was given a fine, two years of probation, and a suspended 90-day jail term. Former Maryland Code Article 27 § 342(f)(2) (repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002); *District Court of Maryland Criminal System Record*, dated December 12, 2006.

On May 20, 2002, the applicant was convicted of Malicious Destruction of Property/Value less than \$500 under Maryland Code, Criminal Law, § 6-301.

The director found that the applicant's conviction for theft under former Maryland Code Article 27 § 342 constitutes a crime involving moral turpitude. The applicant has not disputed this determination on appeal.

The AAO has reviewed the statutes, case law and other documents related to this conviction, as well as the relevant precedent decisions from the Board of Immigration Appeals and the courts. The AAO concurs with the director that the applicant has been convicted of a crime involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act.

It is noted that the applicant's conviction under former Maryland Code Article 27 § 342 does not meet the requirements of the exception found in section 212(a)(2)(A)(ii)(II) of the Act, as a

conviction under former Maryland Code Article 27 § 342 carried a maximum sentence of 18 months of incarceration. Accordingly, the applicant requires a waiver under section 212(h) of the Act.

As the applicant has been convicted of a crime involving moral turpitude, he requires a waiver of inadmissibility under section 212(h) of the Act. Therefore, the AAO need not make a determination of whether his conviction for Malicious Destruction of Property/Value less than \$500 constitutes a crime involving moral turpitude.

Section 212(h) of the Act provides, in pertinent part:

(1) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

....

(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. In this case, the relative that qualifies is the applicant's U.S. citizen wife. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See Id.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals 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). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The applicant’s wife stated that she experienced difficulty prior to her marriage to the applicant, including a divorce, having her children taken away, and serious health problems. *Statement from the Applicant’s Wife*, dated April 22, 2005. She indicated that the applicant helps her, and that he funds their expenses due to the fact that she has limited capacity to work. *Id.* at 1. She provided that the applicant opened his own business in 2005, and she “almost stopped working and pretty much only take[s] care of the house now.” *Id.* She expressed that she loves the applicant and she wishes to have a long marriage with him. *Id.*

The applicant submits an evaluation of his wife’s mental health, conducted by a licensed psychologist, Dr. [REDACTED] stated that he based his evaluation on a 90-minute interview with the applicant and his wife. *Psychological Evaluation from Dr. [REDACTED]* dated February 13, 2006. Dr. [REDACTED] described the applicant’s wife’s history as he discovered it from her, including information about abuse in her family and alcohol and drug use. *Id.* at 2-4. Dr. [REDACTED] indicated that the applicant’s wife reported that she sees her daughter on occasion, and that she is unaware of the whereabouts of her son. *Id.* at 3-4. Dr. [REDACTED] stated that the applicant’s wife claimed she would not relocate to Latvia, as she would be cut off from her daughter, and she “would have no money, could not speak the language[,] and would not be able to obtain employment.” *Id.* at 4. Dr. [REDACTED] indicated that he administered the Minnesota Multiphasic Personality Inventory – Second Edition to the applicant and his wife. *Id.* Dr. [REDACTED] stated that the applicant’s wife’s rapid cycling of mood indicates the presence of Bipolar Disorder with psychotic features. *Id.* at 5. He concluded that the applicant’s wife is “very emotionally reliant

on [the applicant] and his absence would very likely result in serious behavioral and emotional deterioration, with increased substance abuse, risky behaviors, psychotic cognition and conflict with others.” *Id.* at 6. He indicated that he would have similar concerns if the applicant’s wife relocates to Latvia. *Id.*

Upon review, the applicant has not shown that his wife will experience extreme hardship should he be compelled to reside outside the United States. The applicant has not established that his wife will suffer extreme hardship should she remain in the United States without him. The AAO has carefully examined the report from Dr. [REDACTED]. As stated by Dr. [REDACTED], his evaluation was based on a 90-minute interview for the purpose of this proceeding, and thus his report does not constitute evidence of an ongoing relationship with a mental health professional or treatment for a mental health disorder. Dr. [REDACTED] concluded that the applicant’s wife presented symptoms of Bipolar Disorder, yet the record does not reflect that she has received mental health care, follow-up evaluation, or a comprehensive diagnosis from a mental health professional. It is noted that Dr. [REDACTED] commented that the applicant’s wife had consumed four beers before coming to the 9:00a.m. appointment, thus his observations occurred while the applicant’s wife was under the influence of alcohol. While Dr. [REDACTED] report is informative regarding the applicant’s wife’s history and challenges, it does not serve as evidence that she will endure extreme emotional hardship should she reside in the United States without the applicant.

The applicant’s wife expressed that she loves the applicant, and that she will endure emotional hardship should she be separated from him. The AAO acknowledges that the separation of spouses often results in significant psychological difficulty. However, the applicant has not established that his wife will suffer emotional consequences that can be distinguished from those commonly endured when spouses reside apart due to inadmissibility. Federal court and administrative 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 (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.

The applicant’s wife indicated that she relies on the applicant for financial support. However, the applicant has not provided recent documentation of his wife’s expenses. While the applicant’s wife asserted that her capacity to work is limited, the applicant has not submitted any documentation to support this contention such as medical records. Accordingly, the applicant has not shown by a preponderance of the evidence that his absence will cause his wife to endure significant economic hardship.

All stated elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that his wife will endure extreme hardship should he depart and she remain.

The applicant has not shown that his wife will suffer extreme hardship should she relocate to Latvia to maintain family unity. In her statement, the applicant's wife did not assert that she would endure hardship should she relocate abroad. Dr. [REDACTED] recounted statements made by the applicant's wife regarding her concern for her access to employment in Latvia and challenges she would face due to language differences. However, the applicant has not provided any reports on conditions in Latvia, or otherwise supported that his wife would be unable to work in Latvia as the spouse of a Latvian citizen. The record shows that the applicant's wife has experience as a tax driver and restaurant worker, and the applicant has not shown that she would lack access to employment in Latvia that utilizes her prior experience. The applicant has not shown that he would be unable to earn sufficient income in Latvia to meet his and his wife's needs.

Dr. [REDACTED] indicated that the applicant's wife expressed concern for being separated from her daughter in the United States. It is first noted that the applicant has not submitted a birth certificate for his wife's daughter, thus he has not supported that his wife would become separated from a child should she relocate to Latvia. Dr. [REDACTED] noted that the applicant's wife sees her daughter occasionally, which supports that the applicant's wife would not face separation from a child with whom she resides or who she sees on a regular basis should she reside outside the United States.

It is noted that the applicant's wife would not face separation from the applicant should she join him in Latvia. The applicant has not shown that his ability to provide assistance to his wife would be substantially different in Latvia than it is in the United States.

All stated elements of hardship to the applicant's wife, should she relocate to Latvia, have been considered in aggregate. Based on the foregoing, the applicant has not established that his wife will endure extreme hardship should she reside with him in Latvia.

The applicant states that the district director erroneously indicated that he must show that denial of the present waiver application would result in "great actual or prospective injury to the United States nation," when under the applicable law he must show extreme hardship to his wife. *Statement from the Applicant in Form I-290B* at 2. The AAO observes that the district director stated that "only in cases of great actual or prospective injury to the United States nation will the bar be removed." *Decision of the District Director* at 3 (emphasis in original). The AAO agrees that the district director's statement was in error and does not reflect a requirement under section 212(h) of the Act. The district director's statement will be withdrawn. However, the district director appropriately analyzed hardship to the applicant's wife, thus the applicant was not prejudiced by the erroneous statement of law. Further, the AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Accordingly, the present decision is based on the extreme hardship standard found in section 212(h) of the Act, irrespective of the legal analysis conducted by the district director.

The applicant has not shown that denial of the present waiver application “would result in extreme hardship” to his wife, as required for a waiver under section 212(h)(1)(B) of the Act. 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 regarding a 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.