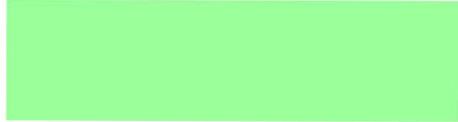




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OFFICE: DENVER

JUN 04 2013

FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Denver, Colorado. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO), and this matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the underlying application will remain denied.

The applicant is a native and citizen of Nepal 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 committed a crime 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 lawful permanent resident spouse.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated January 31, 2012. On appeal, the AAO determined that the applicant had demonstrated extreme hardship to his spouse upon separation, but not relocation, and dismissed the appeal accordingly. *See Decision of the AAO*, dated January 11, 2013.

The applicant has submitted a motion to reopen or reconsider the dismissal of his appeal. The AAO will grant the applicant's motion to reopen. On the applicant's motion, counsel for the applicant asserts that the applicant has submitted new documentary evidence to establish extreme hardship to his spouse upon relocation in the form of an expert opinion.

In support of the applicant's motion to reopen and reconsider, the applicant submitted a letter from a professor and the professor's curriculum vitae.

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.

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), (B), . . . of subsection (a)(2) . . . if –

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of

such subsection or 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 section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once 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).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The AAO incorporates by reference the discussion of the evidence, analysis, and conclusions in its prior decision. The AAO previously determined that the applicant demonstrated extreme hardship to his spouse upon separation from the applicant, but failed to demonstrate extreme hardship upon his spouse's relocation to Nepal.

On motion, counsel for the applicant asserts that he has submitted new evidence indicating that the applicant's spouse will suffer extreme hardship if she relocates to Nepal to reside with the applicant. Counsel stated that the applicant would submit an expert opinion from a professor of international law in support of this assertion. The record contains the curriculum vitae of a law professor from the [REDACTED]. The record also contains a letter from the professor stating that based upon his knowledge and expertise regarding the political, economic, and cultural climate in Nepal and a conversation with the applicant's spouse, he is of the opinion that the applicant's spouse will suffer extreme hardship if she relocates to Nepal.

The record does not contain any other further evidence in support of the applicant's motion. It is noted that the professor, in his submitted letter, states the intention to submit a more extensive analysis for filing on February 11, 2013. However, the record does not contain any such filing. Accordingly, the record does not contain any further documentation or analysis concerning the professor's assertion that the applicant's spouse would face extreme hardship upon relocation to Nepal. As the record does not contain any information indicating the basis for the professor's opinion, and having considered the original evidence in the record, the record remains insufficient to demonstrate that the applicant's spouse would suffer extreme hardship upon relocation to Nepal.

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 application will remain denied.

ORDER: The motion is granted, the prior decision of the AAO is affirmed, and the underlying application remains denied.