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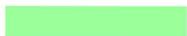


U.S. Citizenship
and Immigration
Services



DATE **MAR 09 2013**

Office: BANGKOK, THAILAND

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Thailand who was found to be inadmissible to the United States pursuant to section 212(a)(2)(D)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D)(i), for having engaged in prostitution within ten years of the date of her application for admission. The applicant is the fiancée of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in conjunction with an immigrant visa application.

The Field Office Director concluded that the applicant had failed to meet the rehabilitation requirements of a waiver under section 212(h)(1)(A) of the Act. *See Field Office Director's Decision*, dated August 26, 2011. She further found that the applicant had not demonstrated that the bar to her admission would result in extreme hardship to her qualifying relative, as required under section 212(h)(1)(B) of the Act, and denied her Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant does not dispute her inadmissibility. *See Applicant's Statement*, dated September 23, 2011, at 2. Her U.S. citizen fiancé contends that the director erred in concluding that the applicant had not satisfied the rehabilitation requirements indicated. *See Statement of Daniel J. Richardson*.

The record of evidence includes, but is not limited to, the applicant's statement; the statement and email of the applicant's U.S. citizen fiancé; a doctor's letter for the U.S. citizen fiancé's father; supporting statements of the applicant's fiancé's family members and friends; statements of the applicant's brother in law in New Zealand and a friend; and statements of officials from the applicant's village and sub-district in Thailand. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(2)(D) of the Act states, in pertinent parts:

Any alien who –

- (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

...
is inadmissible.

The record indicates that the applicant is a 47-year-old native of Thailand who presently resides there. She is the beneficiary of an approved Form I-129F, Petition for Alien Fiancé(e) by her U.S. citizen fiancé. During her consular interview, the applicant admitted to engaging in sex with different men to obtain income to support her family from 2001 to 2003 and from September to November 2007.

Based on her statements under oath before the consular office, the director concluded that the applicant was inadmissible under section 212(a)(2)(D)(i) of the Act, for having engaged in prostitution within ten years of her application for admission. The applicant has not disputed inadmissibility. To the contrary, in her appeal statement, the applicant acknowledged that she “once worked and engaged in prostitution.” See *Applicant’s Statement*, at 2.

The AAO notes that inadmissibility under section 212(a)(2)(D)(i) of the Act must be based on a regular pattern of conduct, rather than isolated acts of prostitution. See *Matter of T-*, 6 I&N Dec. 474, 477 (BIA 1955) (finding that a single act of prostitution is not sufficient to establish that the respondent engaged in prostitution to render her inadmissible); *Matter of Gonzalez-Zoquiapan*, 22 I&N Dec. 549, 554 (BIA 2008). Moreover, we note that the U.S. Department of State defines “prostitution” at section 40.24(b) of title 22 of the Code of Federal Regulations, as:

[E]ngaging in promiscuous sexual intercourse for hire. A finding that an alien has “engaged” in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

The AAO’s review of the record indicates that the applicant admitted to engaging in a “regular pattern of conduct” for over a year that would constitute prostitution, as defined by the federal regulations above. At her consular interview, she admitted that she had five customers between 2001 and 2003 who paid her approximately 800 to 1,000 Baht per night in exchange for sex. The applicant further admitted that beginning in September 2007, she went to the Phuket province in Thailand, where she would go out four to five nights a week to look for a foreign boyfriend. She stated that during her stay in Phuket, she had seven customers who paid her about 1,000 to 3,000 Baht per night in exchange for sex. As previously noted, on appeal, the applicant does not deny the truth of these statements and acknowledges that she did engage in prostitution in the past. Accordingly, the record does not show the director’s finding of the applicant’s inadmissibility under section 212(a)(2)(D)(i) of the Act to be in error.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) 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 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

Pursuant to section 212(h)(1)(A) of the Act, the ground of inadmissibility under section 212(a)(2)(D)(i) of the Act may be waived in the exercise of discretion, if the applicant demonstrates that her admission to the United States is not contrary to the national welfare, safety, or security of the United States, and that she has been rehabilitated.

The record does not disclose any criminal arrest or conviction history for the applicant. However, it does indicate that the applicant admitted engaging in prostitution on a regular basis for the purpose of income or to supplement income she made running her own salon at her residence. On appeal, although the applicant does not deny the truth of these admissions, she asserts that she was verbally mistreated during her consular interview and essentially forced into writing that she was still engaged in prostitution. However, a careful review of the record does not disclose any such written statement by the applicant or any acknowledgment by the Consular Office that the applicant had made such an admission.

The applicant's fiancé, [REDACTED], asserts that the applicant has no intention of returning to her previous lifestyle ever again. We note, however, that aside from his assertions, the record does not contain any evidence of the applicant's remorse, rehabilitation, or good moral character, including in the applicant's own written statement. The statements of the applicant's brother-in-law, her friend, and her sub-district and village headmen, do not address whether they have knowledge of the applicant's past prostitution. They also do not discuss with any specificity or detail her character. Moreover, as the director noted, the applicant admitted that she would have to look for another boyfriend to support her family if her fiancé stopped sending her money. The applicant's fiancé contends the director mistook this to mean that the applicant would engage in prostitution in the future and asserts she would not. The record indicates that the applicant admitted that she met her fiancé at a bar in Phuket, and not at a clothing shop as she initially maintained. She was engaging in prostitution at the time. The applicant admitted that her fiancé paid her for staying with him overnight and for sex for three nights. She also admitted that after dating both Mr. [REDACTED] and another "boyfriend" simultaneously for over a year, she agreed to continue dating Mr. [REDACTED] exclusively on the condition that he provide her with monthly financial support. Her other boyfriend had not agreed to this condition. The director concluded that based on the applicant's statements, it was reasonable to conclude that the applicant would engage in prostitution again should she be without financial support in the future. We conclude that the record does not demonstrate that the applicant's rehabilitation or that her admission is not contrary to the national welfare, safety, or security of the United States.

We now consider the applicant's eligibility for a discretionary waiver under section 212(h)(1)(B) of the Act, which provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 of Immigration Appeals (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 Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in

determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's fiancé asserts in his email of June 19, 2012, that he has had a difficult time in recent times, because his father has been diagnosed with Alzheimers disease and his condition has been declining. A letter from Dr. [REDACTED] MD, dated March 15, 2011, indicates that she is treating Mr. [REDACTED] father for the condition and that he has required around-the-clock supervision and care. The record indicates that Mr. [REDACTED] along with his sister and brother, provide some support in carrying out their father's treatment plan to enable him to remain at home. The record also discloses that Mr. [REDACTED] also lost his mother in 2010, following a terminal illness. Mr. [REDACTED] states that it would mean the world to him to have the applicant, who he states is his best friend, with him during this time.

Having considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's citizen fiancé would experience extreme hardship as a result of separation from the applicant. The AAO acknowledges the distress the applicant's fiancé has faced in recent times arising from his personal situation and that being reunited with the applicant may be of some comfort to him. However, the applicant has not shown the hardship her fiancé would suffer constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385. We note that the applicant and her fiancé have never resided together on a permanent basis and have already been separated for long periods of time. The applicant's fiancé has been able to assist in his father's care, and his mother's before her death, with the support of his siblings while separated from the applicant. There is no evidence that the applicant's fiancé has relied, or relies, upon the applicant in any way whatsoever such that ongoing separation would result in hardship to him that rises to level of extreme hardship.

The AAO also considers whether the applicant's fiancé would suffer extreme hardship upon relocation to Thailand. However, we note that the record does not specifically address the hardships the applicant's fiancé may face by moving to Thailand. The record indicates that the applicant's fiancé has an ill elderly parent in the United States, for whom he provides care, and other close family and community ties. However, the applicant has presented no substantive or corroborating evidence of the impact of separation from those ties on her fiancé to enable the AAO to meaningfully assess the hardship to her fiancé upon relocation. Neither the applicant, nor her fiancé, addresses the possibility that the latter would even relocate in their statements. As such, on the record before the AAO, we cannot find that the applicant established that her fiancé would suffer extreme hardship if upon relocation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 her U.S. Citizen fiancé as required under section 212(h) of the Act. She therefore, remains inadmissible to the United States under section 212(a)(2)(D)(i) of the Act. Since the applicant failed to establish statutory eligibility for the waiver, the AAO finds that no purpose would be served in considering whether she merits a waiver in the exercise of discretion. However, as noted previously, we find that the applicant has not demonstrated rehabilitation, a significant negative factor to overcome.

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In proceedings for a waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.