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U.S. Citizenship  
and Immigration  
Services

H2



FILE:



Office: COPENHAGEN, DENMARK

Date:

JAN 30 2007

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§ 212(h) and 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

**PUBLIC COPY**

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim Attache, Copenhagen, Denmark. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Denmark who is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to § 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, and also pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admittance to the United States by wilfully misrepresenting a material fact. The applicant seeks a waiver of inadmissibility in order to reside with her husband in the United States.

The interim attache denied the waiver application after finding that the applicant had failed to establish extreme hardship to her U.S. citizen spouse. On appeal, the applicant asserts that the evidence shows that her husband will suffer extreme hardship if she is not allowed to return to the United States, since their continued separation will jeopardize their relationship and cause financial hardships. The AAO has reviewed the entire record and concurs with the interim attache's conclusion that the hardships faced are not extreme.

On appeal, the applicant requests leave for oral argument before the AAO. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the applicant fails to identify any unique factors or issues of law to be resolved. Moreover, the written record of proceedings fully represents the facts and issues in this case. Consequently, the request for oral argument is denied.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(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.

The record reflects that the applicant committed the crime of embezzlement, which involves moral turpitude, when she stole \$16,657.89 from her employer from October 2000 to March 2001. The criminal case against the applicant was dismissed after she completed a diversion program including paying back the money; hence, she was never convicted of this crime. The AAO notes that although a conviction is not required for inadmissibility under this section of law, there must be evidence that the alien admitted, under oath, to the commission of acts constituting elements of the crime. The instant record contains insufficient evidence in this regard; therefore, the applicant is not subject to § 212(a)(2)(A)(i)(I) of the Act.

The applicant is, however, subject to the provisions of § 212(a)(6)(C) of the Act which provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that on September 15, 2003, when seeking entry to the United States pursuant to the visa waiver program, the applicant told immigration inspectors that she had never been arrested. She also indicated on the form I-94W entry document that she had never been arrested. The record contains documentation establishing that the applicant was arrested on April 1, 2001 and was booked at the Hennepin County, Minnesota, Sheriff's Office. It is therefore concluded that the applicant misrepresented material information in an effort to gain admittance into the United States.

The applicant is eligible for waiver consideration under § 212(i) of the Act, which provides that:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

Section 212(i) of the Act provides that a waiver of the above-noted bar to admission depends upon an initial showing that the bar imposes an extreme hardship on a qualifying family member, in this case, the applicant's husband. Although extreme hardship is a requirement for such relief, once established, it is but one favorable discretionary factor to be considered. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion.

In *Matter of Cervantes-Gonzalez*, *supra*, 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 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.

U.S. court 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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. 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.

On appeal, the applicant and her husband provide statements in support of her assertion regarding the level of hardship her husband will face if she is refused admittance to the United States. The applicant's husband states that he will not be able to work immediately if he relocates to Denmark to reside with the applicant; however, there is no evidence on the record demonstrating that he could not obtain work authorization and would be unable to find gainful employment in that country. The applicant's husband also writes that the applicant is financially unable to support him should he move to Denmark; however, the record does not support this assertion.

The applicant's husband emphasizes the negative psychological impact of a continued separation from the applicant, and he contends that his right to reside with the applicant in his own country of citizenship has been violated. The record does not include information establishing that the applicant's husband's psychological suffering would be greater than that experienced by other, similarly situated individuals. Moreover, in *Cervantes-Gonzalez*, *supra*, the Board cited *Silverman v. Rogers*, 437 F.2d 102 (1<sup>st</sup> Cir. 1970) (citations omitted), stating that:

[E]ven assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States. *Cervantes-Gonzalez* at 567.

The totality of the documentation in the record does not establish that the applicant's U.S. citizen spouse would suffer hardship that was unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 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.