



U.S. Department of Justice

Immigration and Naturalization Service

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Public Copy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

Office: Shannon (RIT)

Date:

APR 19 2000

IN RE: Applicant:



APPLICATION:

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

IN BEHALF OF APPLICANT: Self-represented

Identifying information to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

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DISCUSSION: The dual waiver application was denied by the District Director, Rome, Italy, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible to the United States by a consular officer under §§ 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(6)(C)(i), for having been convicted of a crime involving moral turpitude and for having entered the United States by fraud or misrepresentation. The applicant is the fiancé of a United States citizen and the beneficiary of an approved nonimmigrant fiancée/fiancé visa petition. He seeks a waiver of this permanent bar to admission as provided under §§ 212(h) and (i) of the Act, 8 U.S.C. 1182(h) and (i), to enter the United States and conclude a valid marriage.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon on his United States citizen fiancée and denied the application accordingly.

On appeal, the applicant submits statements from his mother and fiancée in which they assert that the applicant has paid the price for his mistakes, works in a bank where he is highly regarded and poses no threat to the United States. It is alleged that it would be very stressful for the applicant's future wife to live in Scotland because she is part of a very close knit family and would be unable to spend Christmas with her husband and her family in America.

The record reflects the following regarding the applicant:

On December 5, 1992, he was convicted of four counts of shoplifting. He was fined on each count.

The applicant entered the United States on August 2, 1995, November 14, 1995, March 19, 1996, and August 7, 1996, under the Vias Waiver Pilot Program (VWPP) and indicated on Form I94W that he had never been convicted of a crime involving moral turpitude. He was denied a nonimmigrant "R" visa in September and October 1996. He attempted to obtain admission under the VWPP at Detroit on October 30, 1996 and checked "no" for convictions on Form I94W. The applicant obtained a new passport and tried to gain admission on December 26, 1997 but admission was denied.

Section 212(a)(2)(A)(i)(I) of the Act provides that:

Any alien who is convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of 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(a)(6)(C)(i) of the Act provides that:

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.

Section 212(h) of the Act provides that the Attorney General may, in her discretion, waive application of subparagraphs (A)(i)(I), if-

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

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of

the Attorney General to grant or deny a waiver under this subsection.

Section 212(i) of the Act provides that:

(1) The Attorney General may, in the discretion of the Attorney General, waive application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

The applicant requires both a § 212(h) and § 212(i) waiver in this matter. Both §§ 212(h) and 212(i) require a showing of extreme hardship to a qualifying relative.

For § 212(h) purposes, less than 15 years have elapsed since the applicant committed his last violation. Therefore, he is ineligible for the waiver provided by § 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under § 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation, financial difficulties, etc., in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a § 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

A review of the documentation in the record which focuses on family separation, when considered in its totality, fails to establish the existence of hardship caused by such separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. The assertions that the applicant's future wife would suffer hardship if she joined him in the United Kingdom and other problems are speculative only and unsupported in the record. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the



discretion of the Attorney General and pursuant to such terms, conditions, and procedures as she may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of proving eligibility remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Since the applicant has failed to establish his eligibility for the granting of a waiver under § 212(h) of the Act, the appeal regarding the waiver under § 212(i) of the Act must also be dismissed as the applicant is not otherwise admissible. Accordingly, the decision of the district director will be affirmed.

ORDER: The appeal is dismissed.