

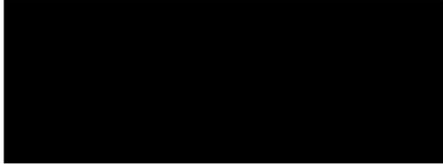


U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: [Redacted]

Office: Vienna

Date:

FEB 04 2000

IN RE: Applicant: [Redacted]

APPLICATION:

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

IN BEHALF OF APPLICANT:



Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

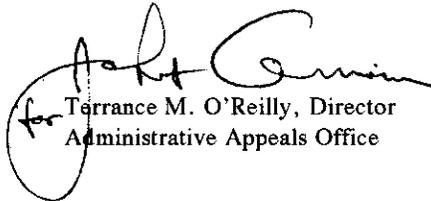
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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

  
for Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Officer in Charge, Vienna, Austria, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States by a consular officer under § 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 a crime involving moral turpitude. The applicant is the unmarried son of a naturalized United States citizen and is the beneficiary of an approved preference visa petition. He seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to join his father in the United States.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon his United States citizen wife and denied the application accordingly.

On appeal, counsel argues that the applicant did not commit a crime involving moral turpitude.

Issues of inadmissibility are to be determined by the consular officer when an alien applies for a visa abroad. This proceeding must be limited to the issue of whether or not the applicant meets the statutory and discretionary requirements necessary for the inadmissibility ground to be waived. 22 C.F.R. 42.81 contains the necessary procedures for overcoming the refusal of an immigrant visa by a consular officer.

On appeal, counsel states that the applicant's father is old, has recently divorced from his wife and is living alone. Counsel states that the applicant's father feels a great need to have his son with him due to the fact that he will be having back surgery, which will require a long period of recuperation. Counsel indicates that the applicant's brother lives in the United States but is married and has his own family. Counsel then discusses the exercise of discretion as the crime was committed at least 12 years ago.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION. - Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS. -

(A) CONVICTION OF CERTAIN CRIMES. -

(i) IN GENERAL. - Except as provided in clause (ii), any 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) WAIVER OF SUBSECTION (a) (2) (A) (i) (I), (II), (B), (D), AND (E).-The Attorney General may, in his discretion, waive application of subparagraph (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.

Here, fewer 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 or financial difficulties, 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).

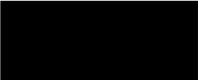
The record reflects the following concerning the applicant:

- (1) In 1987, the applicant was convicted of beating his wife. He was sentenced to one year and six months in prison.
- (2) In 1994, the applicant was convicted of the same crime committed in 1988 or 1989. Because the conviction came five years after the act, the sentence was discontinued and the case was dismissed.

On April 10, 1998, the applicant's father submitted an affidavit of support in behalf of the applicant. The applicant's father states the he immigrated to the United States in 1982 when the applicant was 21 years old and became a naturalized U.S. citizen in January 1992. The record contains a letter from a physician which reflects that the applicant's father has been under his care since October 1995 and was diagnosed as having a herniated disc with complications. Since the applicant's father did not have insurance to cover the necessary surgical procedures he obtained private medical insurance to cover the lumbar laminectomy. A supplementary statement from the employer of the applicant's father indicates that the applicant's father has been employed continuously at the plant since June 1984, has not been laid off during that time, has not taken a leave of absence or had more than two weeks vacation in any year. Although the record suggests that the applicant's brother is not in a position to help their father, the record reflects that both the applicant's father and brother live at the same address, [REDACTED]. It is reasonable to assume that, when both parties (the applicant's father and brother) are living under the same roof, one party would be able to help the other party, ancillary responsibilities notwithstanding.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship over and above the normal economic and social disruptions involved in the deportation of a family member that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. 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 establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.