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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: LONDON, ENGLAND Date: JUN 18 2001

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: SELF-REPRESENTED

Public Copy

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

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, London, England on behalf of 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 by a consular officer to be inadmissible to the United States 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 United States citizen step-father and lawful permanent resident mother. He is the beneficiary of an approved petition for alien relative and seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to travel to the United States to reside.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly.

On appeal, the applicant asserts that he has shown extreme hardship to a qualifying relative and that the facts relating to his recent offenses should not affect evidence of his rehabilitation.

The record reflects that between August 2, 1983 and March 24, 1998, the applicant was convicted in the Norwich Magistrates Court, Norwich, England, of eleven counts of theft, two counts of burglary, one count of handling a stolen motorcycle, and one count of obtaining money by deception.

Section 212(a) of the Act states:

> 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:
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> * * *
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> (2) CRIMINAL AND RELATED GROUNDS.-
>
> (A) CONVICTION OF CERTAIN CRIMES.-
>
> (i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such 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 states:

> The Attorney General may, in his 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 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 was last convicted of a crime involving moral turpitude. 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)(B) 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).

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The 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 submits a letter asserting that his most recent offenses were an aberration, out of character with his efforts at rehabilitation, that were brought about by acute personal circumstances. The applicant's family in the United States believes that closer and continual access to the applicant would reinforce his rehabilitation. The applicant's step-father and mother would like a second chance for the applicant to live with them in the United States in order to give him their support.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's parents caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to travel to the United States to reside at this time. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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.