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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: Frankfurt Date: AUG 06 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Frankfurt, Germany denied the dual waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is before the AAO on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Latvia who was found to be inadmissible to the United States by a consular officer under sections 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 in May 1994 and for having procured a visa and admission into the United States by fraud or misrepresentation. The applicant married a United States citizen on February 9, 2000, in England, and he is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of these permanent bars to admission as provided under sections 212(h) and (i) of the Act, 8 U.S.C. 1182(h) and (i).

The officer in charge concluded on March 22, 2001, that the applicant had failed to establish that extreme hardship would be imposed upon on a qualifying relative. He also concluded that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The AAO affirmed that decision on appeal on September 14, 2001.

The record reflects that the applicant was convicted on May 10, 1994, of the offense of Criminal Breach of Trust. He was subject to five years imprisonment but was placed on probation for four years. The applicant failed to disclose this conviction when he applied for and was issued nonimmigrant visas on January 19, 1999, and October 25, 1999, and when he applied for and was granted admission into the United States on February 3, 1999, and in November 1999.

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 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 or she 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….

Section 212(i) of the Act provides that the Attorney General may, in his discretion, waive application of clause (i) of subsection (a)(6)(C)--

(1) 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.

(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 section 212(h) and section 212(i) waiver in this matter. Although both sections 212(h) and 212(i) require a showing of extreme hardship to a qualifying relative, the application will be adjudicated first according to the standards established for section 212(i) waivers, because the criteria are more stringent than those set forth in section 212(h) waiver proceedings.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Children are not qualifying relatives for section 212(i) purposes. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Counsel filed a motion to reconsider on October 9, 2001, and asked the following questions:

Did the AAO and the officer in charge err in basing their decisions to deny discretionary relief on a fact not established by the record, that the applicant's actions caused the death of one individual?

> The AAO decision states that the applicant was convicted of the offense of Criminal Breach of Trust on May 10, 1994, in Riga, Latvia. The AAO decision does not mention the death of an individual or the applicant's possible involvement. The AAO decision was based entirely on the applicant's failure to establish extreme hardship to a qualifying relative. Having found the applicant statutorily ineligible for relief, the AAO declined to discuss on appeal whether or not the applicant merited a waiver as a matter of discretion. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568 (BIA 1999).

Did the AAO and the officer in charge properly apply the criteria enunciated by the Board in *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999)?

> In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals (the Board) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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; the extent of the qualifying relative's ties to such countries; the financial impact of departure from this country; and, finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The Board then refers to *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), where 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.
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> While counsel made a generalized statement on motion regarding the applicant's wife's inability to resettle in Latvia, that she does not know the language, would have to end her career and would lose direct contact with her family, he failed on to detail and document how these factors rise to the level of extreme hardship noted in *Cervantes-Gonzalez.*
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> The Board in *Cervantes-Gonzalez,* also referred to *Silverman v. Rogers,* 437 F.2d 102 (1st Cir. 1970), cert. denied 402 U.S. 983 (1971), where the court stated that, "even 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."

> There are no laws that require a United States citizen to leave the United States and live abroad. The applicant's wife in this matter is a member of the U.S. Armed Forces, is earning a living, and will not be forced to go to the applicant's native country to live.

Did the AAO and the officer in charge abuse their discretion in finding that the applicant's U.S. citizen spouse and newborn child would not suffer the requisite extreme hardship?

> The common results of deportation are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). 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.
>
> The AAO examined all statements submitted and determined that the financial and emotional difficulties described by the applicant, his spouse and counsel did not rise to the level of extreme as envisioned by Congress. Though the applicant's spouse stated that she was experiencing problems related to her security clearance and service with the U.S. army, there was no documentation to support these assertions.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to reside in the United States. The assertions of hardship and other problems are unsupported in the record. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

In proceedings for application for 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. Here, the applicant has not met that burden. Since the applicant has failed to establish his eligibility for the granting of a waiver under section 212(i) of the Act, the appeal regarding the waiver under section 212(h) of the Act must also be dismissed, as the applicant is not otherwise admissible. Accordingly, the order dismissing the appeals will be affirmed.

ORDER: The motion is denied. The order of September 14, 2001, dismissing the appeal is affirmed.