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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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: Denver Date: AUG 13 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

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 waiver application was denied by the Acting District Director, Denver, Colorado, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland who first entered the United States in 1993 as a nonimmigrant visitor. Her status was changed to that of nonimmigrant worker, H-1B. She was found to be inadmissible to the United States under section 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 married to a lawful permanent resident, and she is the derivative beneficiary of an approved Petition for Alien Worker. The applicant seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her lawful permanent resident spouse and denied the application accordingly.

The record reflects the following:

1. On February 20, 1996, the applicant was convicted of the offense of Petty Theft committed on November 26, 1995. She was fined and ordered to complete a Shoplifters Awareness Program.

2. On May 14, 1999, the applicant was convicted of the offense of Theft committed on April 23, 1999. A six month deferred judgement was entered and she was ordered to continue counseling until clinically discharged or the conclusion of six months and fined.

3. On January 14, 2001, the applicant was convicted of the offense of Shoplifting committed on January 14, 2001. A deferred judgement and sentence was entered, she was ordered to serve 48 hours of community service and fined.

4. On February 22, 2002, the applicant was convicted of the offense of Trespass committed on November 8, 2001. She was placed on unsupervised probation for 11 months, ordered to serve 48 hours of community service and fined.

On appeal, counsel resubmits a January 28, 2002 letter from Dr. [redacted] M.D., Diplomate of the American Board of Psychiatry and Neurology, and submits his January 20, 2003 letter discussing the applicant's history of Bipolar Affective Disorder that addresses the applicant's treatment and prognosis. Dr. [redacted] states that returning the applicant to Poland with the current state of European psychiatry would represent a significant danger for her and for her mental health. Counsel states that the applicant has lived in the United States for at least 10 of her 12 years of marriage and having her husband remain in the United States while she returns to Poland is not an option.

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

> (A)(i) 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) of the Act provides, in part, that:-The Attorney General [now Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I)...or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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 Secretary 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….

Here, fewer than 15 years have elapsed since the applicant committed the last violation. Therefore, the applicant is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude. In addition to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009, this intent was recently seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214, which relates to criminal aliens. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. *See Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). *See also Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 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).

On appeal, counsel refers to the issue of "extreme hardship" as that term was applied in matters involving suspension of deportation under section 244 of the Act, 8 U.S.C. § 1254, prior to its amendment by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and recodification under section 240A of the Act, 8 U.S.C. 1230A, and redesignation as "cancellation of removal." *Matter of Piltch*, 21 I&N Dec. 627 (BIA 1996); *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978).

Although the former application for suspension of deportation and the present and past applications for waiver of grounds of inadmissibility require a showing of "extreme hardship," the parameters for applying such hardship are somewhat narrower in waiver of grounds of inadmissibility application proceedings. In such proceedings, the applicant may only show that such hardship would be imposed on a spouse, parent, or child who is a citizen or lawful permanent resident of the United States. In former suspension of deportation proceedings, the alien could show hardship to himself or herself as well as the condition of his or her health, age, length of residence beyond the minimum requirement of seven years, family ties abroad, country conditions, etc.

On appeal counsel provides detailed information on the applicant's mental condition and the hardship she would suffer if returned to Poland. The Bureau is not dismissing the significance of the applicant's condition, however, the applicant's health is not an issue in section 212(h) proceedings. "Extreme hardship" to an alien herself cannot be considered in determining eligibility

for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968). Nor does the possible connection between her condition and her criminal acts relieve her of the ground of inadmissibility.

While there was extensive discussion of the hardship to the applicant, the issue in this matter is hardship to her husband. In various affidavits and briefs, counsel, the applicant and her husband spoke in general terms about the economic and emotional hardship the applicant's spouse would suffer, but did not provide sufficient evidence that he would suffer hardship beyond the norm.

The Board in *Cervantes-Gonzalez, supra*, 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."

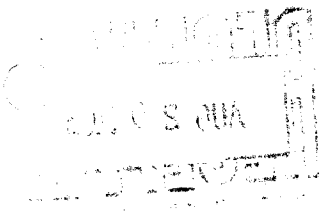
Although the applicant alleges financial hardship in this matter, the Board referred to *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), in which the court stated that the "extreme hardship requirement of section 212(h)(2) of the Act was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy."

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.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, 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.

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 he 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 section 212(h) of the Act, the burden of establishing that the application merits approval 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.