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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]

AUG 18 2003

FILE: [redacted] Office: FT. MYER, FLORIDA Date:

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:

SELF-REPRESENTED

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, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 36-year old native and citizen of Jordan. The applicant is a beneficiary of a petition for alien relative filed by his U.S. citizen wife. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), in order to reside in the United States.

The district director concluded that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), and that he failed to establish extreme hardship to his United States citizen wife and two stepchildren. The application was denied accordingly.

On appeal, the applicant asserts that he has new evidence establishing that his removal would cause extreme hardship to his United States citizen wife. The applicant also asserts that he is eligible for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act.

The District Director found the applicant to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act based on the fact that the applicant was convicted of a crime involving moral turpitude in April 1997.

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

> (i) [A]ny 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.

According to the evidence on the record, the applicant was arrested in January 1997 and charged with fraud on a loan insured by the Department of Housing and Urban Development. In April 1997, the applicant pled guilty to the charge. He was sentenced to six months imprisonment, three years supervised release and ordered to make restitution in the amount of $10,000. The applicant has prior criminal charges including forged checks and conspiracy to transport in international commerce vehicles that were stolen or obtained by fraud, though he was not convicted of any other charge.

Section 212(h) of the Act provides, in pertinent part, that:

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the 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 [Secretary] that-
>
> > (i) [T]he 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, or
> >
> > (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 [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 [Secretary], 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.

The applicant asserts on appeal that his United States citizen wife and two stepchildren will suffer hardship if a waiver of inadmissibility is not granted.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provided a list of factors the Board of Immigration Appeals (BIA) deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors included 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 and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, the applicant submits a letter from his wife's therapist stating that: "losing [the applicant] may be detrimental for [the applicant's] wife's emotional health."

On appeal, the applicant submits a letter from his wife stating that she would suffer financially and emotionally if her husband would be forced to return to Jordan. On appeal, the applicant states that his wife earns only $2.13 per hour plus tips, therefore, she is dependent upon his income. According to the evidence on the record, the applicant's wife was previously earning $930.95 per month or $5.40 per hour.[1] The applicant did not explain why his wife's hourly wage was cut in half.

Matter of Pilch, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family ties is a common result of deportation and does not constitute extreme hardship. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), additionally held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. Moreover, the U.S. Supreme 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his United States citizen wife and two stepchildren would suffer extreme hardship if he were excluded from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

On appeal, the applicant asserts that he is eligible for the petty offense exception set forth in section 212(a)(2)(A)(ii)(II) of the Act. Section 212(a)(2)(A)(ii)(II) of the Act provides that an exception exists for the grounds of excludability if:

> The maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed).

In review, the applicant is not eligible for the petty offense exception because he was convicted of a crime for which the maximum penalty possible was two years.[2]

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[1] The applicant's wife signed an affidavit of support and included a letter from her employer stating that she earned $433 in wages biweekly.

[2] See Plea Agreement dated March 24, 1997 that states that the statutory maximum sentence that the Court can impose for a conviction of 18 U.S.C. § 1010 is two years incarceration; a one year period of supervised release; a fine of $250,000; and a special assessment of $50.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.