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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 25 2003

FILE: [redacted] Office: COPENHAGEN, DENMARK Date:

PUBLIC COPY

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]

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 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 Officer in Charge, Copenhagen, Denmark. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Iran and citizen of Sweden. The applicant was found to be inadmissible to the United States pursuant to 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 record indicates that the applicant married a naturalized U.S. citizen in November 2000, and that she filed a petition for alien relative on the applicant's behalf on June 18, 2001. The applicant seeks a waiver of inadmissibility in order to live with his wife in the United States.

The officer in charge (OIC) found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *See OIC Decision,* dated October 11, 2002.

On appeal, counsel requests oral argument. 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. The Bureau has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

On appeal, counsel states that the applicant's U.S. citizen wife (Mrs. [redacted] suffers from recurrent depression and that she will suffer extreme emotional hardship if the applicant's waiver is denied. To support his assertion, counsel submitted a letter from Mrs. [redacted] doctor. Counsel additionally submitted a psychological report for Mr. [redacted] as well as affidavits attesting to his good character.

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-
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> > (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 pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
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> (1) (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 . . . .

The Board of Immigration Appeals (BIA) decision, *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999) provided a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship. 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.

Counsel submitted a letter from Dr. [redacted], stating that Mrs. [redacted] suffers from severe recurrent depression, and that she was referred to him for treatment in 1999. *See* Letter by Dr. [redacted] M.D., C.M., F.A.P.A., dated August 9, 2001. Dr. [redacted] indicates that Mrs. [redacted] depression dates back years, and that she was receiving psychotherapy treatment before she was referred to him. Dr. [redacted] further indicates in his letter that he treated Mrs. [redacted] in April, 1999 and that she contacted him again in July 2001. He had a follow-up meeting with her in August 2001.

On appeal, counsel asserts that Mrs. [redacted] went into remission when she met and married the applicant. However, Dr. [redacted] letter does not make this conclusion. Moreover, based on the information in his letter, Dr. [redacted] has not met the applicant and he appears to have no independent

knowledge regarding the nature or character of Mrs. [redacted] relationship with her husband. It has thus not been established that Mrs. [redacted] marriage to the applicant caused her to go into remission.

Dr. [redacted] states in his letter that Mrs. [redacted] depression would get worse if she moved to Sweden to be with her husband because it is cold and dark there, she would not have the same level of medical care available to her, she does not speak the language and would be unable to work, and she would be socially isolated. Dr. [redacted] states that Mrs. [redacted] would suffer increased depression if she moved to France (her native country) for the above reasons and because she does not want to live in France.

Dr. [redacted] conclusions that Mrs. [redacted] depression will worsen if she moves to Sweden or France are not supported by independent medical or factual evidence in the record. Indeed, the evidence in the record indicates that Mrs. [redacted] returns to Europe frequently, and that she married the applicant in Sweden in November 17, 2000.

Although the record contains no information regarding how, when or where the applicant and his wife met, the evidence indicates that the applicant had not traveled to the U.S. prior to his marriage to Mrs. [redacted]. Thus, it does not appear that the Mrs. [redacted] met the applicant in the United States. *See* 10/00, and 1/01-3/01 emails submitted into evidence. Moreover, the emails between the applicant and his wife discussed where they should live, and although Mrs. [redacted] expressed a preference to live in the U.S., she also stated that Europe would be their plan B if things did not work out in the U.S. *See* email, dated 1/5/01. It is further noted that, despite assertions on appeal indicating that Mrs. [redacted] would not be able to work in Sweden, Mrs. [redacted] herself mentions the possibility of working in Sweden in one of her emails. *See* email, dated 1/5/01.

U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship and that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). *See also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996).

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to demonstrate that his U.S. citizen spouse would suffer extreme hardship if his waiver application were not granted. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.