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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*

PUBLIC COPY

[redacted]

File: [redacted] Office: VIENNA, AUSTRIA Date: FEB 28 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)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

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 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Vienna, Austria, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland who was found by a consular officer to be inadmissible to the United States under section 212(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2). The applicant is the son of a United States citizen father and is the beneficiary of an approved petition for alien relative. He seeks a waiver of his permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order 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 states that although he committed a petty offense in the past, he regrets it and knows that he will not do it again. He states that he is an only child and wishes to reunite with his father, who is old, tired, and lonely. He further asserts that he is learning English because his father wants him to study in the United States.

The record reflects that in the period between May 1997 and December 1997, the applicant made verbal and gestural threats towards an individual and threatened him physical harm, in violation of section 166 of the Polish Criminal Code (PCC). On December 6, 1996, the applicant threw stones through the window of the person he had threatened and deliberately broke the windowpane of the victim's lodging, in violation of section 212.1 of the PCC. A violation of section 166 of the PCC can result in a fine and/or imprisonment of up to two years. A violation of section 212.1 of the PCC can result in a fine and/or imprisonment of up to five years.

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:
>
> * * *
>
> (2) CRIMINAL AND RELATED GROUNDS.-
>
> (A) CONVICTION OF CERTAIN CRIMES.-

 [redacted]

(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.

* * *

(ii) EXCEPTION.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

> (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to prison or correctional institution imposed for the crime) more than five years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
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> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having convicted or of which the acts that the alien admits having committed constituted the essential elements) 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 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) MULTIPLE CRIMINAL CONVICTIONS.- Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the convictions was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for

which the aggregate sentences to confinement[1] were 5 years or more is inadmissible.

Section 212(h) of the Act states:

> The Attorney General may, in his discretion, waive application of subparagraphs (A)(i)(I), (B) . . . 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

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[1] The terms "actually imposed" were deleted after this word by IIRIRA § 322(a)(2)(B). Change applies to "convictions and sentences entered before, on, or after the date of the enactment of this Act. Subparagraphs (B) and (C) of section 240(c)(3) of the Immigration and Nationality Act, as inserted by section 304(a)(3) of [IIRIRA], shall apply to proving such convictions."

> 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 committed the violation(s) for which he was found inadmissible. Therefore, he is ineligible for consideration of a waiver provided by section 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 section 212(a)(2)(A)(i)(I) or 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 section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

The record contains a statement from the applicant's father expressing his desire that his spouse and the applicant in Poland be allowed to join him in the United States. He states that he is 62 years-old, hard-working, very tired, and alone, and that he wishes to be reunited with them.

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. 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. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994).

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the

applicant's father, other than the normal disruptions involved in 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. As previously indicated, hardship to the applicant himself is not a consideration section 212(h) proceedings. 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), 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.