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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] 099 50002 Office: MOSCOW, RUSSIA Date: MAY 14 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]

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

MAY1403_01H2212

DISCUSSION: The waiver application was denied by the Officer in Charge, Moscow, Russia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Russia who 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 applicant is the son of a United States citizen mother, and he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his mother in the United States.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relative. The application was denied accordingly.

On appeal, the applicant, through counsel, asserts that despite his conviction, the applicant is not guilty or capable of committing the crime of moral turpitude for which he was found guilty. Counsel asserts further that the applicant's crime was indemnified pursuant to Russian law and that the applicant is therefore not "convicted" for immigration purposes. In support of his argument, counsel submitted a copy of the court certificate stating that the applicant was indemnified pursuant to article 86, part 2, of the Criminal Code of the Russian Federation. Counsel additionally submitted affidavits from the applicant and his mother (Mrs. [redacted] asserting that she will suffer extreme hardship if the applicant's waiver of inadmissibility is not granted. Counsel also submitted good character letters for the applicant, and a letter from Mrs. [redacted] nurse regarding her physical and emotional condition.

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

> (A)(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.

A crime involves moral turpitude where knowing or intentional conduct is an element of the offense. *Matter of Perez-Contreras,* 20 I&N Dec. 615, 618 (BIA 1992). In this case, the record indicates that the applicant was convicted of knowingly and willfully bribing an individual.

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

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . . .
>
> (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 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 record reflects that on November 13, 2000, the applicant was convicted of bribery in the Perovsky Inter-Municipal Court of the Eastern Administrative Area of Moscow, in violation of article 33 part 4 and article 291, part 1 of the Criminal Code of the Russian Federation. The applicant was sentenced to 2 years imprisonment. The record reflects further that the applicant's punishment of 2 years in prison was nullified pursuant to a general amnesty provision, under article 1 of Resolution of the State Duma of the Federal Meeting of the Russian Federation of May 26, 2000. *See Applicant's translated Conviction and Sentence Record* ("Conviction Record"). According to the conviction record, the applicant's sentence went into effect on November 21, 2000, and he was given 7 days to appeal the conviction. There is no evidence in the record that the applicant appealed his conviction. The conviction is thus considered to be final for purposes of the present decision.

Counsel asserts that because the applicant was the beneficiary of a general amnesty, he is not "convicted" for immigration purposes, and thus not inadmissible. Counsel's assertion is unpersuasive.

It is first noted that the amnesty provision referred to by counsel did not nullify the applicant's final conviction in Russia. Rather, it simply nullified the imposition of the applicant's **punishment.** *See Conviction Record.* Moreover, even if the amnesty had nullified the applicant's conviction in Russia, "[f]oreign amnesties . . . do not obliterate a foreign conviction or remove the disabilities which result from such a conviction for purposes of the [Immigration and Nationality] Act . . . ." *Marino v. Immigration and Naturalization Service,* 537 F.2d 686 (2nd Cir. 1976) (internal quotations and citations omitted).

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

> A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where -
>
> (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
>
> (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The evidence in the record clearly reflects that the applicant meets the definition of "conviction" as set forth in the Act.

Counsel additionally asserts that the applicant is innocent and that he was improperly convicted of the crime of bribery. This assertion is also unpersuasive. "[C]ollateral attacks upon an [applicant's] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned." *In Re Max Alejandro Madrigal-Calvo,* 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted.) Moreover, this office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See id.*

Counsel asserts that in the event that the applicant is inadmissible, he has established that his mother will suffer extreme physical and emotional hardship if the applicant's waiver of inadmissibility is not granted.

A waiver of the bar to admission to the United States is dependent upon the alien's showing that the bar imposes an extreme hardship on a qualified family member. Congress provided this waiver but limited its application. By this limitation, it is evident that Congress did not intend that a waiver be granted merely due to the fact that a qualifying relationship exists. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the United States citizen or permanent resident will the bar be removed. Common results of the bar, such as separation, financial difficulties, and such, in themselves are insufficient to warrant approval of an application unless combined with more extreme impacts. *See Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The 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. In *Matter of Ige,* 20 I&N Dec. 880, 882, (BIA 1994), the BIA held that "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

In this case, the applicant's mother states that the separation from her children causes her great stress and anxiety and that her health has suffered as a result. *See Mrs. Medvedeva's Hardship Letter,* dated July 13, 2001. In addition, the applicant asserts that because his parents are elderly and his mother is ill, they need him to care for them.

U.S. court decisions have repeatedly held, however, that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. 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.

In this case, the applicant has failed to establish that the stress of separation that his mother experiences is other than a normal consequence of exclusion or deportation. He has also submitted no evidence to support the assertion that his mother needs him to care for her.

Moreover, the medical letter submitted by the applicant has no probative value in this case. The letter is written by a registered nurse (Ms. [redacted]) and states summarily that Mrs. [redacted] has panic disorder and depression, and that Ms. [redacted] is concerned about the effect of the rejection of the applicant's visa on Mrs. [redacted] emotional and physical health. No information is provided regarding whether Mrs. [redacted] is being treated by a doctor or psychiatrist. Additionally, the letter contains no information about the implications and effects of Mrs. [redacted] diagnosis or the basis of the diagnosis.

A review of the record, when considered in its totality, reflects that the applicant has failed to show that his mother would suffer extreme hardship if his waiver of inadmissibility application is denied. Having found the applicant 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(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.