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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



FILE:  Office: VIENNA, AUSTRIA Date: **MAY 28 2003**

IN RE: Applicant: 

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

MAY2803_02H2212

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

The applicant is a native and citizen of Albania 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 father and a lawful permanent resident mother, and he is the beneficiary of an approved petition for alien relative, filed in 1993. 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 parents 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 relatives. The application was denied accordingly. It is noted that the applicant has filed two prior waiver applications. The Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services ("BCIS")) denied the first application in Frankfurt, Germany, on August 11, 1998. The second application was denied in Vienna, Austria, on February 21, 2001. The applicant filed appeals in each case and the AAO denied the appeals on February 11, 1999, and January 22, 2002, respectively.

In his current appeal, the applicant asserts that he feels "morally and psychologically obligated to be near [his parents] in this period of life that has remained to them [sic]." The applicant additionally asserts that he regrets his past criminal behavior and that he has been rehabilitated. The applicant submitted an updated copy of a German certificate of good conduct and an updated Albanian certificate indicating that he has no criminal record in Albania.¹ Based on a hardship letter submitted by the applicant's U.S. citizen father on August 17, 2002, the applicant asserts that his father is advanced in age and ill, and that both of his elderly parents need the applicant to care for them financially and emotionally. He asserts further that his parents will suffer extreme emotional hardship if his application is not granted because, due to their age, and in his father's case his health, they will most likely not see the applicant or his family again prior to their deaths.

¹ It is noted that the applicant's 2001 waiver application contained similar certificates from the German and Albanian governments. The certificates are therefore not considered to be new evidence in the applicant's case.

The record reflects that the applicant has the following criminal record in Germany:

- 1) On August 4, 1992, he was convicted of petty theft for stealing items of low value. He was fined DM 150.
- 2) On May 13, 1994, he was convicted of petty theft for stealing items of low value. He was fined DM 240.
- 3) On December 14, 1994, he was convicted of accessory to theft and fined DM 400.
- 4) On March 31, 1995, he was convicted of theft of a pair of shoes. He was sentenced to 3 months prison and two years probation.
- 5) On June 20, 1995, he was convicted of theft of two packs of cigarettes. He was sentenced to four months imprisonment and two years probation.
- 6) On September 19, 1995, he was convicted of joint theft for stealing 34 packs of cigarettes. He was sentenced to six months imprisonment and three years probation.

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.

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

As pointed out in the most recent Officer in Charge (OIC) waiver decision, dated August 22, 2002:

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 OIC Decision at 2, citing, *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."

It has been held that "the family and relationships between family members is of paramount importance" and that "separation of family

members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) citing, *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). Nevertheless, 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 asserts that his U.S. citizen father is advanced in age and ill, and that both of his elderly parents need him to care for them financially and emotionally. The applicant asserts further that his parents will suffer extreme emotional hardship if his application is not granted because due to their age, and in his father's case, his health, his parents will most likely not see the applicant or his family again prior to their deaths.

The evidence in the record does not support a finding of extreme hardship in this case. The doctor's letter submitted by the applicant regarding his father's (Mr. [REDACTED]) illness states summarily that Mr. [REDACTED] was diagnosed with a severe coronary artery disease and unstable angina. No information was provided about Mr. [REDACTED] medical history with the doctor, the implications and effects of Mr. [REDACTED] diagnosis, the basis of the diagnosis or any medical treatment received by Mr. [REDACTED].

In addition, the record does not contain psychological or other evidence to support the assertion that Mr. [REDACTED] would suffer extreme emotional hardship if the applicant's waiver is not granted. Moreover, no information or corroborative evidence was submitted regarding the parent's financial situation, and no evidence was submitted to support the assertion that the applicant's parents need the applicant to care for them or about how the applicant would care for them.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his parents 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.