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U.S. Citizenship and Immigration Services

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FEB 11 2004

FILE: Office: DENVER, COLORADO Date:

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Korea 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 beneficiary of an approved petition for alien relative filed by his U.S. citizen father. 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 father in the United States.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his father. The application was denied accordingly. *See* Acting District Director's *Decision* dated March 6, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services, (CIS) misapplied the extreme hardship standard set forth in section 212(h) of the Act, and that the evidence in the record establishes extreme hardship to the applicant's qualifying relative.

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 [now the Secretary of Homeland Security, "Secretary"] 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 [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 record reflects that on March 26, 1998 the applicant was convicted of a crime involving moral turpitude (assault with a deadly weapon) and was sentenced to 90 days imprisonment and three years probation.

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen father.

On appeal, counsel asserts that CIS failed to correctly assess the extreme hardship to the applicant's father (Mr. In support of this assertion, counsel submitted a brief, a psychological evaluation on behalf of Mr ind affidavits from the applicant's family members and friends. In the brief counsel states that Mr. ould suffer emotionally and financially if his son's waiver application is not approved. Affidavits from the applicant's family members and friends discuss the applicant's good character and the hardship the family members and the applicant would suffer if his application is not approved.

In his brief counsel examines the hardship to the applicant himself would suffer if he was to be removed. "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 psychological evaluation submitted on behalf of Mr was based on one visit from Mr. and stated that he feels "very desperate, anxious, highly agitated and tense." It further states that Mr. feels that he was an inadequate father, that he wants to spend more time with his son to make up for the" lost time and that he is looking forward to having the applicant working with him. The evaluation was based on one interview with Mr. and does not contain a diagnosis of any medical condition nor does it indicate he is receiving any kind of treatment or medication. The psychologist concludes with a recommendation that the applicant be granted residency in the US because many members of his family who are now citizens of the US are suffering a great deal of extreme anguish. The report does not indicate that the applicant's father would suffer extreme hardship, only anxiety, tension and guilt.

As mentioned, section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the to the qualifying family member, a U.S. citizen or lawfully resident *spouse, parent, son, or daughter*. The law does not mention extreme hardship to a U.S. citizen or resident sibling. Thus the affidavits presented and the psychologist's comments regarding the hardship the applicant's siblings would suffer will thus not be considered.

The statement of financial hardship to the applicant's father is contradicted by the fact that, pursuant to section 213A of the Act, 8 U.S.C. § 1183a, and the regulations at 8 C.F.R. § 213a, the person who files an application for an immigration visa or for adjustment of status on of after December 19, 1997 must execute a Form I-864 (Affidavit of Support) which is legally enforceable on behalf of a beneficiary (the applicant) who is an immediate relative or a family–sponsored immigrant when an applicant applies for an immigrant visa. The statute and the regulations do not provide for an alien beneficiary to execute an affidavit of support on behalf of a U.S. citizen or resident alien petitioner. Therefore, a claim that an alien beneficiary is needed for the purpose of supporting a citizen or resident alien petitioner can only be considered as a hardship in rare instances.

In addition, the record indicates that Mr earns approximately $50,000 a year, an income well above the poverty level for a family of three. No evidence has been provided to substantiate that his son's financial contribution is critical to his lifestyle or well being, only that he wants to expand his business by having the applicant working with him.

U.S. court decisions have repeatedly held 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS, supra*, held further that 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. The U.S. Supreme Court additionally 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 U.S. citizen father would suffer extreme hardship if he were removed 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.

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.