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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

FILE: Office: BALTIMORE, MD Date: JAN 20 2004

IN RE:

PETITION: 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 PETITIONER:

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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Sri Lanka who was found to be inadmissible to the United States under 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 married to a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may remain in the United States with her spouse.

The district director concluded that the applicant failed to establish extreme hardship would be imposed upon her U.S. citizen spouse if her waiver were denied. The application was denied accordingly. *See* Decision of District Director, dated August 14, 2002.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] erred in denying the waiver. Counsel states that CIS has shown an abuse of discretion and misapplied the applicable regulations and case law. Counsel contends that the applicant has established that her husband will suffer extreme and unusual hardship if she is denied the waiver of inadmissibility.

The record includes a copy of the marriage certificate for the applicant and her husband; court documents regarding the applicant's conviction on a misdemeanor offense; a letter from the applicant's husband, dated September 2, 2002; verification of the employment of the applicant's husband; a letter from the parents of the applicant's husband; medical records for the parents of the applicant's husband; a psychological report for the applicant's husband; school transcripts for the applicant and her husband; a letter from the applicant, dated April 16, 2002 and country condition reports for the country of Sri Lanka. The entire record was considered in rendering a decision on this application.

The record reflects that:

On May 21, 1996, the applicant pleaded guilty on two charges of Misuse of a Credit Card in Montgomery County, MD. The applicant was sentenced to 25 hours of community service and 120 days of probation as well as restitution for these offenses.

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

> (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

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

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provides a list of factors it deems relevant in determining whether an alien has established extreme hardship. These factors include 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. 22 I&N Dec. at 565-566.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Any hardship suffered by the applicant herself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

Counsel contends that the applicant's husband will suffer extreme hardship if he departs the United States and moves to Sri Lanka with the applicant. Counsel cites the need for the applicant's husband to remain in the United States to care for his aging parents who suffer from established medical conditions. Counsel also indicates that the applicant's husband will be unable to secure gainful employment in Sri Lanka. Counsel supports this assertion with generalized country condition reports that do not establish that the applicant as an individual will be unable to obtain a job. Counsel also states that the applicant's husband does not speak Singhalese and has a limited number of family members in Sri Lanka. *See* Brief in Support of Application for Waiver.

While counsel asserts that the applicant's husband cannot relocate to Sri Lanka, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States. The AAO notes that as a naturalized citizen, the applicant's husband is not required to depart from the United States as a result of the adjudication of the applicant's waiver. Counsel asserts that the applicant's husband will suffer financial hardship as a result of losing income from the applicant's future projected employment. Speculative assertions regarding future earnings cannot form the basis of a finding of extreme hardship. The record indicates that the applicant has been unemployed since 2000. Therefore, her departure does not represent a financial hardship to her husband.

Counsel states that the applicant provides daily care to the parents of the applicant's husband. The parents of the applicant's husband are not qualifying relatives under section 212(h) of the Act and therefore, any hardship they suffer is irrelevant to adjudication of the waiver application. Further, the record does not establish that the applicant is the only person capable of attending to her husband's parents. On the contrary, the applicant was planning to begin a career after completing her degree and thus could not continue as the sole provider of care to her husband's ailing parents.

Counsel submits a psychological evaluation for the applicant's husband contending that he is "shown to have tremendous stress, intense anxiety, agitation and somatic complaints due to the current situation involving his

wife's possible removal." *Id.* The findings of the psychologist preparing the evaluation state that the applicant's husband "suffers from no diagnosable psychiatric disorder." *See* Psychological Evaluation compiled by Psy. D., dated September 22, 2002. The report does not indicate an ongoing relationship between the psychologist and the applicant's husband and it does not indicate any ongoing treatment for the applicant's husband. The psychologist states that the applicant's husband is "likely" to have problems with intense anxiety and that there is "a distinct possibility" that his anxiety is due to stressors in his life including the applicant's immigration situation. The conjectural language employed by the psychologist does not establish a medical condition warranting a finding of extreme hardship.

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 AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if her waiver application were denied. 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(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.