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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

FILE: Office: SEOUL, KOREA Date: MAR 01 2004

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:

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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 Officer in Charge, Seoul, Korea, 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 on February 2, 1998, of bank fraud and false bank entries, a crime involving moral turpitude. The applicant was sentenced to 10 months imprisonment, with 5 months served at the Correction Institution Dublin and 5 months served at home with an electronic monitoring device (Temporary Supervised Release). In addition, the applicant was subject to a 5-year supervised release with the Honolulu Probation Unit. The applicant is married to a United States (U.S.) citizen and she 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 she may reside with her U.S. citizen husband and child in the United States.

The officer in charge concluded that the applicant had failed to establish extreme hardship would be imposed upon her U.S. citizen husband and son. The application was denied accordingly.

On appeal, counsel asserts that the applicant's husband and son will suffer extreme financial and emotional hardship if the applicant's waiver of inadmissibility application is denied.[1]

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-
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> > (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, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> > (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-
> >
> > > (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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, or

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[1] Counsel also asserts that the applicant's mother is a U.S. citizen and that she will suffer extreme hardship if the applicant is not allowed to return to the United States. The AAO will not consider hardship to the applicant's mother in its decision. The record contains no evidence of the applicant's mother's immigration status. Nor does it contain evidence or information to indicate that her mother is dependent on the applicant or that she would suffer hardship in the applicant's absence.

(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 [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; [and]

. . .

(2) the Attorney General [Secretary], 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.

[N]o 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 [Secretary] to grant or deny a waiver under this subsection.

The AAO notes that the applicant is ineligible for a waiver of inadmissibility pursuant to section 212(h)(1)(A) because the crime for which she was convicted did not occur more than 15 years prior to the filing of her adjustment of status application. The AAO notes further that, although the applicant's theft conviction occurred after she was previously admitted to the U.S. as a lawful permanent resident, she does not meet the definition of an aggravated felon as set forth in section 101(a)(43)(G) of the Act, because she was sentenced to less than one year of imprisonment. A review of the record reflects that the applicant is therefore eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 to determining whether an alien has established extreme hardship to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

The AAO notes that 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, 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 the present case, counsel indicates that the applicant's U.S. citizen husband and son did not move with the applicant to Korea when she was deported in June of 2000, and that they do not intend to move to Korea in the future. Counsel asserts that the applicant's husband and son will suffer extreme financial and emotional hardship if the applicant's waiver of inadmissibility application is denied due to her husband's increased financial burdens and family responsibilities, and due to the emotional effects of family separation on the applicant's husband and son.

In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) *Salcido-Salcido* held further that "[w]hen the BIA attributes the hardship posed by family separation to parental choice instead of deportation, the BIA abuses its discretion." *Id.* at 1293 (citations and quotations omitted).

In the present case, the record contains a September 18, 2000, psychological evaluation by Dr. of the applicant's then 12-year-old-son, , and of the applicant's husband, The evaluation appears to be based on one interview session with each of the individuals, and no formal diagnosis is contained in the evaluation.

The evaluation indicates that Dr. discussions with the applicant's son and husband revealed that the applicant was the primary caretaker for her son, and that her son eats less, is doing worse in school, and cries about the loss of his mother. In addition, Dr. indicates that discussions revealed that the applicant's husband can afford only basic necessities without the contribution of his wife's previous salary, that her husband feels overwhelmed by single parenthood, and that her son now has only limited interaction with his maternal relatives, and visits with his paternal cousins only when the applicant's husband's work schedule permits it. *See September 18, 2000, Letter and Evaluation*, written by Barham, R.N., Ph.D.

The record also contains a sworn affidavit from the applicant's brother, indicating, in pertinent part, that the applicant's entire immediate family (parents, three brothers and the applicant) immigrated from Korea to Hawaii in May 1972, and that they and their families have continuously lived in Hawaii since that time.

The AAO finds that the evaluation letter from Dr. lacks probative value. Dr. letter is based on one, first-time interview of unspecified length, with the applicant's husband and son, and the evaluation contains no medical diagnoses, basis or explanation for its conclusions regarding either family member's emotional state. Dr. _____ evaluation letter does not discuss ongoing visits or treatment plans. Moreover, neither the record nor Dr. letter contains corroborating evidence to substantiate the general statements that the applicant's removal from the United States has resulted in financial hardship or a reduced living standard for her husband and son, or that the applicant's son's school performance diminished after his separation from his mother. Dr. conclusion that the applicant's son now has less contact with his extended family is also unsubstantiated by any independent evidence or statements in the record. The record contains no statements of hardship from the applicant's husband or son, and the remaining evidence does not establish that the applicant's husband or son would suffer extreme hardship based on the applicant's removal from the United States.

Accordingly, the AAO finds that the applicant has not established that if her waiver application is denied, her husband and son would suffer hardship beyond that which would normally be expected upon the removal of an alien family member.

A review of the documentation in the record, when considered in its totality, thus reflects that the applicant has failed to show that her U.S. citizen spouse and child would suffer extreme hardship. 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, the burden of proving eligibility remains entirely with the applicant. *See* § 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.