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U.S. Citizenship and Immigration Services

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APR 05 2004

FILE: [redacted] Office: COPENHAGEN, DENMARK Date:

IN RE: [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: SELF-REPRESENTED

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 Immigration Attaché, Copenhagen, Denmark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Sweden 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 the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her U.S. citizen husband.

The immigration attaché concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Immigration Attaché, dated May 27, 2003.

On appeal, the applicant asserts that she is eligible for an exception pursuant to section 212(a)(2)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(I); that her crime qualifies as a petty offense or alternatively, that denial of her waiver will result in extreme hardship to her U.S. citizen husband. *See* Appeal of Denial of Application of Waiver of Grounds of Excludability under Section §212(a)(2)(A)(i)(I) Re: [redacted] aka [redacted] dated July 21, 2003.

In support of these assertions, the applicant submits copies of court documents and statutes relating to her criminal history; a letter attesting to poor employment opportunities for the applicant's spouse in Sweden; a letter attesting to economic opportunities for the applicant in California; copies of medical records and letters from physicians attesting to the medical condition of the applicant's husband; a declaration of the applicant's spouse, dated July 22, 2003; a declaration of the applicant, dated July 22, 2003 and color copies of four photographs of the applicant and her spouse together. The entire record was considered in rendering a decision on the appeal.

The record reflects that on August 30, 1999, the applicant was convicted of attempted fraud and falsification of a document in the Gothenburg City Court, Gothenburg, Sweden. The applicant was ordered to pay a fine of 300 Swedish kronor.

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-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (ii) Exception – Clause (i)(I) shall not apply to an alien who committed only one crime if –
>
> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States ...

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 -

. . . .

(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 applicant asserts that she qualifies under the exception articulated at section 212(a)(2)(A)(ii)(I) of the Act as her conviction represents her first offense and the crime occurred more than five years ago. *See* Appeal of Denial of Application of Waiver of Grounds of Excludability under Section §212(a)(2)(A)(i)(I) Re: [redacted] aka [redacted] The applicant does not qualify as contended as the statute clearly states the condition, ignored by the applicant, that the applicant must have been under 18 years of age at the time the crime was committed. The crime occurred on December 29, 1995. According to the applicant's own assertions, she was born in Sweden on August 28, 1973. *Id.* at 2. The applicant, therefore, was 22 years of age at the time the crime was committed and does not qualify for the exception under section 212(a)(2)(A)(ii)(I) of the Act.

Further, the applicant's assertion that the committed crime constitutes a misdemeanor rather than a felony is without merit in section 212(h) waiver proceedings. *Id.* at 5-8. Section 212(a)(2)(A)(i) of the Act makes no provision for the differentiation of misdemeanors. Any crime involving fraud is a crime involving moral turpitude. Burr v. INS, 350 F.2d 87,91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966). See also Matter of Yanez-Yaquez, 13 I&N Dec. 449 (BIA 1970) (finding that passing forged instruments is a crime involving moral turpitude.) The applicant was convicted of a crime involving moral turpitude rendering her inadmissible under section 212(a)(2)(A)(i) of the Act.

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, child 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

The applicant contends that her spouse would suffer extreme hardship as a result of relocating to Sweden as all of his immediate family members, with whom he has close relationships, reside in the United States and he has no family ties in Sweden. *Id.* at 9. Further, the applicant's spouse would find it difficult to obtain suitable employment in Sweden. *Id.* In the United States, the applicant's husband works as a notary public and no comparable position exists in Sweden. The applicant asserts that her spouse will also suffer hardship in finding a job in Sweden because he does not speak Swedish. *Id.* Leaving the United States would additionally force the applicant's spouse to abandon the band in which he is a member. *See* Letter from Kyle Morris, dated March 1, 2003. Finally, the applicant offers testimony from medical physicians indicating that her spouse suffers from severe bronchial problems as well as asthma, lumbosacral scoliosis and retrolisthesis. *See* Letters from David M. Rekar, MD, dated July 11, 2003 and Michael J. Beals, DC, dated July 9, 2003. According to these authorities, the climate in Sweden would exacerbate the condition of the applicant's spouse.

The applicant does not establish extreme hardship to her spouse if he remains in the United States maintaining his chosen employment, access to appropriate healthcare, residence in a warm climate and close proximity to extended family members. 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. 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 fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *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.