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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: FRANKFURT, GERMANY Date: MAY 19 2004

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:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY

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

The applicant is a native and citizen of Afghanistan and resident of Germany who was found to be inadmissible to the United States by a consular officer 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 naturalized United States citizen and is the beneficiary of an approved Form I-129F (Petition for Alien Fiancé(e)). 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 in the United States with his U.S. citizen wife.

The officer in charge 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 Officer in Charge, dated November 6, 2003.

On appeal, counsel asserts that denial of the applicant's waiver will result in extreme hardship to his U.S. citizen spouse. Counsel contends that the applicant's wife would and has suffered emotional, medical and financial hardship that reaches the level required for the granting of a waiver. *See* Form I-290B, dated December 4, 2003.

In support of these assertions, counsel submits a brief dated January 29, 2004; a report from a licensed clinical social worker, undated; a letter from an orthopedic surgeon, dated January 28, 2004; a letter from a primary care physician, dated January 17, 2004; a letter from the brother of the applicant's spouse, dated January 29, 2004; a letter of confirmation and translation from the Council of Afghan Refugees, dated December 12, 2003; a copy of a U.S. Department of State report addressing country conditions in Afghanistan, dated March 31, 2003; a copy of "A History of Women in Afghanistan: Lessons Learnt for the Future or Yesterdays and Tomorrow: Women in Afghanistan" by Dr [redacted] appearing in the *Journal of International Women's Studies*, Volume 4, Number 3, May 2003. The record also contains letters of support and a letter from the applicant's spouse, dated July 17, 2003. The entire record was considered in rendering a decision on the appeal.

The record reflects that on October 19, 1999, the applicant was convicted in the Local Court of Burgdorf, Germany, of aiding and abetting organized professional fraud in three cases. The applicant served five months in prison and was placed on suspended sentence status for a period of two years and six months ending on April 18, 2003.

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.
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> (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 -
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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 . . .

Counsel cites the Board of Immigration Appeals (BIA) decision in *Matter of B*, I&N Dec. 47 (BIA 1941), to support the assertion that violation of German Reich Criminal Code § 263 is not a crime involving moral turpitude (CIMT). In *Matter of B*, the BIA granted permanent residence to the applicant after finding that he was convicted under § 263 "primarily because [he] was a Jew." *Id.*at 49. *Matter of B* does not hold that German Reich Criminal Code § 263 universally is not a crime involving moral turpitude, as contended by counsel. Rather, the BIA found that the *Matter of B* applicant was convicted because of political considerations rendering the crime not one of moral turpitude under the circumstances presented in the case. The assertions of counsel are not convincing, as the record does not establish that the circumstances confronted by the applicant in the instant application are akin to those confronting an applicant of Jewish descent in Nazi Germany at the time of World War II. Generally, any crime involving fraud is a CIMT. *Burns v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert. denied, 383 U.S. 915 (1966). In *Matter of Katsanis*, 14 I&N Dec. 266, 268 (BIA 1973), the BIA stated that "[m]oral turpitude attaches to crimes where fraud is an ingredient." (Citations omitted).

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 himself 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Afghanistan or Germany. To support this assertion, counsel submits a report from a licensed clinical social worker chronicling the flight of the applicant's spouse with her family from Kabul, Afghanistan during the Soviet occupation. *See* Letter from dated. Counsel contends that the applicant's wife suffered through a traumatic ordeal in fleeing her homeland as a young child and has lived in the United States for most of her life rendering her unable to return to Afghanistan. *Id.* Counsel further asserts that the applicant's wife must remain in the United States to care for her mother who suffers from schizophrenia as well as for her aging father. *Id.* As additional evidence, counsel submits a country condition report for Afghanistan and an article addressing treatment of women in the home country of the applicant and his spouse. *See* U.S. Department of State, Country Reports on Human Rights Practices 2002, Afghanistan and "A History of Women in Afghanistan: Lessons Learnt for the Future or Yesterdays and Tomorrow: Women in Afghanistan" by Dr. Huma Ahmed-Ghosh.

Counsel states that if the applicant is denied admission to the United States, he will likely be repatriated to Afghanistan from Germany, ostensibly the worse of two evils for the applicant's spouse. *See* Brief in Support of Appeal, dated January 29, 2004. Counsel provides a letter from the Council of Afghan Refugees establishing that the applicant is a member of the Council and that the Federal Republic of Germany is considering expulsion of Afghan refugees. *See* Letter from dated December 12, 2003. The AAO notes that counsel's assertions regarding the repatriation of the applicant are speculative. The record does not establish that the applicant faces a particularized threat of expulsion from Germany. Counsel, however, simultaneously asserts that relocation to Germany would also pose hardship to the applicant's wife.

Counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States maintaining her employment, access to appropriate healthcare and close proximity to family members requiring her care. Counsel asserts that the applicant's spouse faces financial hardship in the United States without the applicant. The AAO notes, however, that the applicant and his spouse have never resided together to establish a financial situation that differs from the one currently experienced by the applicant's wife. Counsel contends that the applicant's spouse has invested in a business in order to provide the applicant with employment upon admission to the United States. *See* Brief in Support of Appeal at 4. The record does not establish that the applicant's spouse is unable to sell the auto body shop in which she invested in order to reclaim her funding. Counsel also seeks to establish that the applicant's spouse suffers emotionally as a result of separation from the applicant. The AAO notes that the mental condition of the applicant's wife is attributable to numerous circumstances. *See* Letter from MD, dated January 17, 2004. The record, regrettably, does establish that the applicant's spouse suffers from depression and related ailments, however it does not establish that the presence of the applicant would serve to assuage the suffering of his wife in any meaningful manner.

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 wife endures hardship as a result of separation from the applicant. However, her situation, if she 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.