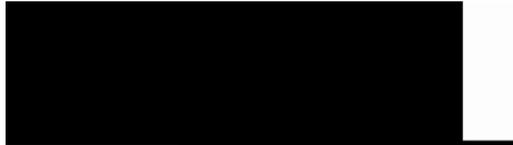


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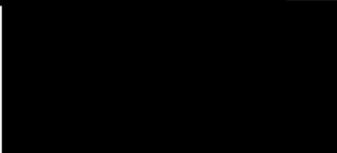
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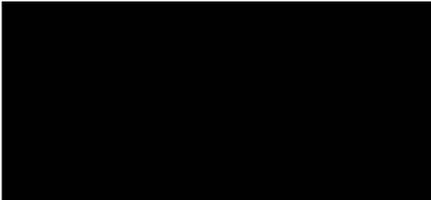
IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (the 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Anchorage, Alaska denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Canada who was last admitted to the United States on humanitarian parole on July 16, 1998, and who applied to adjust her status to permanent resident on June 19, 2002. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude. In order to remain in the United States with her U.S. citizen (USC) husband, [REDACTED] the applicant seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The record reflects that [REDACTED] was convicted in Canada of fraud on two separate occasions: once in 1990 and once in 1992 and was convicted of personation with intent in Canada in 1995. As a result of these convictions, the district director found the applicant to be inadmissible to the United States. *District director's decision*, dated March 17, 2005. The district director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, counsel for the applicant submits a brief and additional documentation. The record includes the following: criminal dispositions; evidence that [REDACTED] is a USC and that he couple has three children born in the United States: [REDACTED] and [REDACTED] and three children born in Canada: [REDACTED] and [REDACTED] the couple's marriage certificate; a statement of hardship from [REDACTED] documents relating to enlistment in the U.S. Army Reserves; documentation related to [REDACTED] cerebral palsy and eligibility for services in Alaska; a letter about sexual molestation allegations [REDACTED] made against an uncle and a custody order prohibiting the uncle from having contact with [REDACTED] and documentation relating to Thomas' asthma and attention deficit disorder. The AAO reviewed the entire record in arriving at a decision on the appeal.

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

- (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, Secretary, 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.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed *only one crime* if-

....
(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(Emphasis added).

The exception at 212(a)(2)(A)(ii) applies to an alien who committed only one crime involving moral turpitude. The record reflects that [REDACTED] was convicted of fraud on two separate occasions and of personation with intent on another occasion. Therefore she does not qualify for the exception and is inadmissible for having been convicted of a crime involving moral turpitude.

A section 212(h) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident spouse, parent or son or daughter of the applicant. Hardship to the applicant is only considered insofar as it may affect her qualifying relatives, in this case, her USC husband, three USC children.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of [REDACTED]*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of [REDACTED]* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties in the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

"Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

Counsel asserts that relocation to Canada would result in extreme hardship to several of the [REDACTED] because they have special needs: one has cerebral palsy; another was sexually molested by an uncle; and a third suffers from asthma and attention deficit disorder. *See documentation related to Shaelynne's cerebral [REDACTED] documentation about the alleged molestation of [REDACTED]; and documentation relating to [REDACTED] asthma and attention deficit disorder.* Counsel, however, failed to submit documentation to show that suitable medical care for Shaelynne, [REDACTED], or Thomas would be prohibitively expensive or unavailable in

Canada. There is no documentation to demonstrate that these medical and psychological conditions prohibit the children from moving to Canada. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Counsel asserts that [REDACTED] U.S. born children are not Canadian citizens and would be ineligible for medical care in Canada. This assertion is incorrect. Pursuant to Canadian nationality law, [REDACTED] U.S. born children are automatically Canadian citizens if they were born outside Canada, were born after February 14, 1977, and had a parent who was Canadian at the time of their birth.¹ Medical care would be available to her children. Therefore, relocation would not result in extreme hardship to her or the children.

[REDACTED] asserts that there is no work for him in Canada. While existing economic conditions in Canada are considerations in determining extreme hardship, the applicant has not submitted documentation about these conditions or evidence of how these conditions would affect her husband. The applicant does not submit documentation demonstrating why someone in her husband's situation would be unable to find employment in Canada. *Matter of Soffici*.

Counsel asserts that separation from his wife will result in extreme hardship to [REDACTED] because he will have to raise his children as a single father. Single parenting, while challenging, is not sufficient to establish extreme hardship to [REDACTED]. Single parents make adjustments to their schedules to deal with their children's school, counseling, and medical needs as a normal part of life. These logistical issues are a normal part of life when parents live separately. In addition, the documentation submitted was provided to establish that [REDACTED] could not raise six children on his own without [REDACTED] but counsel did not document or explain why [REDACTED] could not relocate to Canada with [REDACTED] to avoid separation.

Although it is clear that her husband would suffer if she relocated to Canada and he remains in the United States, or if he leaves his job and goes to live in Canada, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation or relocation on [REDACTED], while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does not meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the [REDACTED] factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See [REDACTED] v. *INS*, 96 F.3d 390 (9th Cir. 1996), describing extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation; and [REDACTED] v. *INS*, 927 F.2d 465, 468 (9th Cir. 1991), holding that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure hardship if he remains in the United States separated from the applicant, their situation, based on the documentation in the record, does not rise to the

¹ As noted on the government of Canada's Citizenship and Immigration Canada website: <http://www.cic.gc.ca/english/citizen/bornout-info.html>.

level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). 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 rests 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.