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U.S. Citizenship
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FILE: [REDACTED] Office: BANGKOK DISTRICT OFFICE

Date: AUG 31 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration Attaché, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Fiji 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 of crimes involving moral turpitude. The applicant was further found inadmissible pursuant to section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having been convicted of multiple criminal offenses. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to enter the United States as a permanent resident pursuant to an approved Form I-130 Petition for Alien Relative filed on his behalf.

The Acting Immigration Attaché concluded 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 Excludability (Form I-601) accordingly. *Decision of the Acting Immigration Attaché*, dated April 7, 2004.

On appeal, the applicant contends that his permanent resident spouse and U.S. citizen daughter will suffer extreme hardship if he is prohibited from entering the United States. *Statement from Applicant in Support of Appeal*.

The record contains a copy of the marriage certificate of the applicant and his spouse; a copy of the permanent resident card of the applicant's spouse; a copy of the naturalization certificate and U.S. passport of the applicant's daughter; a copy of the birth certificate of the applicant's daughter; a letter from a foreign attorney in support of the appeal; a statement from the applicant in support of the appeal; a statement from the applicant's spouse and daughter in support of the original Form I-601 application for a waiver; a letter from the doctor of the applicant's spouse; letters from individuals attesting to the applicant's good character, and; documentation of the applicant's criminal history. The entire record was reviewed and considered in rendering this decision.

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
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
 - ...
- (B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more 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) [or] (B) . . . of subsection (a)(2) . . . if -
 - (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -
 - (i) . . . 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,
 - (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
 - (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 [now the Secretary of Homeland Security (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 record reflects that the applicant has been convicted of six crimes between September 17, 1969 and March 7, 1994. At least two of these offenses constitute crimes involving moral turpitude (an act intended to cause grievous bodily harm and theft.) Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The Acting Immigration Attaché further indicated that the applicant is inadmissible pursuant to section 212(a)(2)(B) of the Act for having been convicted of multiple criminal offenses. However, section 212(a)(B) only applies if the aggregate sentences to confinement total five years or more. As the record reflects that the applicant's sentences total less than five years, he is not inadmissible under section 212(a)(B) of the Act. The applicant does not contest his inadmissibility on appeal.

In examining whether the applicant is eligible for a waiver, the AAO will first assess whether he meets the requirements of section 212(h)(1)(A) of the Act. Only one of the applicant's criminal offenses occurred less than 15 years before he applied for an immigrant visa, namely the offense of "common assault." Whether assault is a crime involving moral turpitude turns on the particular circumstances and gravity of harm. *See eg. Matter of Beato*, 10 I&N Dec. 730 (BIA 1964); *Matter of S*, 9 I&N Dec. 688 (BIA 1962); *Matter of B*, 5 I&N Dec. 538 (BIA 1953). The record contains insufficient information to determine whether this offense was a crime involving moral turpitude. If the applicant's conviction for common assault is deemed not a crime involving moral turpitude, he is potentially eligible for a waiver under section 212(h)(1)(A) of the Act, as in such case the crimes for which the applicant is inadmissible occurred more than 15 years before the date of his application for a visa. *See* Section 212(h)(1)(A)(i) of the Act. However, to establish eligibility for a waiver

under section 212(h)(1)(A) of the Act, an applicant must provide evidence to show that he has been rehabilitated. Section 212(h)(1)(A)(iii) of the Act. In the present matter, the applicant has failed to show that he has been rehabilitated following his over 25 year pattern of violent criminal activity, as required by section 212(h)(1)(A)(iii) of the Act. It is noted that, on October 15, 2003, the Fiji Police Force denied the applicant a certificate of rehabilitation. *Letter from Fiji Police Force regarding Certificate of Rehabilitation*, dated October 15, 2003. The applicant has not provided other sufficient evidence to establish that he has been rehabilitated. Thus, the applicant has not shown that he is eligible for a waiver under section 212(h)(1)(A) of the Act.

The AAO notes that section 212(h)(1)(B) 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. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen daughter and permanent resident spouse. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

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

On appeal, the applicant contends that his wife will suffer extreme hardship should he be prohibited from entering the United States. *Statement from Applicant in Support of Appeal*. The applicant provides that he made a promise to his spouse to stay together upon their marriage, and it is their cultural and religious custom to not be separated. *Id.* The applicant provided a letter from his spouse in which she states that she is a diabetic, and that her care was better in the United States than in Fiji. *Letter from Applicant's Spouse*. She indicates that her religious practice is incomplete without the presence of the applicant. *Id.* The applicant submits a letter from his spouse's doctor in Fiji, who attests that the applicant's spouse has been diagnosed with diabetes, and that the applicant's spouse feels her care is better in the United States. *Letter from Dr. D. Nandan*. The applicant's daughter attests that her mother will receive better health care in the United States and that her parents are unable to complete their religious practices if they are separated. *Statement from Applicant's Daughter*, dated April 29, 2004.

The applicant states that his daughter purchased a seven bedroom house in anticipation of his arrival. *Statement from Applicant in Support of Appeal*. The applicant submits a letter from a legal organization in which the author states that the applicant's daughter is looking forward to reuniting with the applicant and she will endure mental stress if her wishes are not fulfilled. *Letter from Koyas*, dated April 29, 2004.

The applicant indicated that his grandson will be deprived of his company should he be prohibited from entering the United States. *Statement from Applicant in Support of Appeal*. In the letter from the applicant's

daughter, she explains that the applicant's grandson misses the applicant. *Statement from Applicant's Daughter*, dated April 29, 2004.

Upon review, the applicant has failed to show that his spouse or daughter will suffer extreme hardship should he be prohibited from entering the United States. The applicant indicates that he and his wife have never been separated, and that his wife will suffer emotional hardship should he be prevented from joining her in the United States. However, the applicant has not established that these consequences go beyond those which are commonly experienced by the families of aliens deemed inadmissible. U.S. court decisions have 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 applicant indicates that his grandson will experience emotional hardship should he remain outside the United States. However, hardship to the applicant's grandson is not a relevant factor in determining whether the applicant is eligible for a waiver under section 212(h) of the Act. *See* section 212(h)(1)(B). The AAO understands that the applicant's U.S. citizen daughter will experience emotional hardship due to failing to have the applicant interact with her son. However, neither the applicant nor his daughter articulate additional hardships to his daughter, and thus the applicant has not shown that his daughter will experience hardships beyond those which are commonly experienced by the families of aliens deemed inadmissible.

The applicant reports that his spouse will suffer hardship due to the lack of comparable treatment for her diabetes in Fiji. The availability of adequate health care in a country to which a qualifying relative would relocate is an important consideration. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). However, the applicant has not shown that his spouse suffers from conditions that cannot be properly treated in Fiji or other countries to where she might relocate. The applicant's spouse indicates that she suffers from diabetes, yet a letter from her doctor in Fiji reflects that she has received care for this condition including insulin injections. The applicant has failed to show that the lack of adequate medical care in Fiji will result in extreme hardship for his spouse should he be prohibited from entering the United States.

The applicant and his spouse state that they will be unable to perform particular religious practices should they be separated. Yet, the applicant has failed to describe these practices or to explain their prominence within his and his spouse's religious practice. Further, it is noted that the evidence of record suggests that the applicant's spouse has resided with him in Fiji since 1972 without incident or hardship. Thus, the applicant's spouse is free to remain in Fiji with the applicant and continue their religious practices. The applicant has not shown that his spouse will suffer extreme hardship due to the potential interruption of their religious practice.

Based on the foregoing, the applicant has not shown that, should he be prohibited from entering the United States, his family members will suffer emotional hardship that is unusual or beyond that which would

normally be expected upon deportation. The applicant has not established that his spouse's health status will result in extreme hardship due to his inadmissibility. The applicant has not shown that his and his spouse's religious practice will be necessarily interrupted due to his absence from the United States. Thus, the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse or daughter 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 he 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.