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U.S. Citizenship
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Services

HA
FEB 22 2005



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FILE:

Office: BUFFALO, NEW YORK

Date:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 Application for a Waiver of Inadmissibility was denied by the District Director, Buffalo, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Barbados who is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. He has three stepchildren and one adopted daughter who suffers from epilepsy. On September 4, 1998, the district director found that the applicant was inadmissible to the United States pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien who has been convicted of a crime involving moral turpitude (manslaughter). The applicant seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his wife and children in the United States. The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relatives. The applicant's waiver application was denied accordingly.

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.

The record reflects that the applicant was convicted of manslaughter in the Barbados in 1988.

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General 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 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

A waiver of the bar to admission to the United States is dependent upon the alien's showing that the bar imposes an extreme hardship on a qualified family member. Congress provided this waiver but limited its application. By this limitation, it is evident that Congress did not intend that a waiver be granted merely due to the fact that a qualifying relationship exists. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the U.S. citizen or permanent resident will the bar be removed. Common results of the bar, such as separation, financial difficulties, and such, in themselves are insufficient to warrant approval of an application unless combined with more extreme impacts. See *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

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 in determining whether an alien had established extreme hardship. The 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. In *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), the BIA held that "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

The record contains a statement by the applicant's wife regarding the hardship the applicant's removal would cause their adopted daughter, who is now approximately 21 years old. The district director took the applicant's daughter's epilepsy into consideration in arriving at his decision, but the evidence was insufficient to establish that she would suffer from extreme hardship.

The applicant submitted a timely Form I-290B on October 6, 1998, including an adoption decree for his daughter and a letter from her physician, Dr. [REDACTED]. On the Form I-290B, the applicant fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. The doctor's brief letter states that the applicant's absence could potentially worsen his daughter's epilepsy. Dr. [REDACTED] does not indicate how the applicant's removal would worsen her condition or to what degree it would aggravate her epilepsy. Dr. [REDACTED] letter fails to provide sufficient information upon which the conclusion can be drawn that the applicant's removal would cause his daughter to suffer extreme hardship. The record contains no documentation or statements to establish that the applicant's wife would suffer extreme hardship should he be removed.

A review of the record, when considered in its totality, reflects that the applicant has failed to show that his daughter would suffer extreme hardship if his waiver of inadmissibility application is denied. Having found the applicant 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 under § 212(a)(2)(A) 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.