



U.S. Citizenship  
and Immigration  
Services

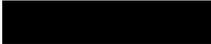
Identifying cases deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



H2 H3

FILE:



Office: ACCRA, GHANA

Date:

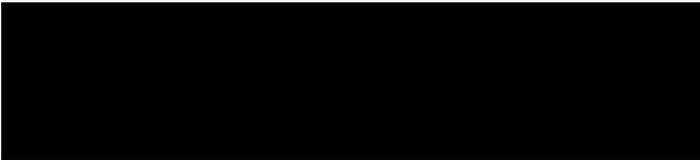
OCT 24 2005

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§ 212(i) and 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Officer in Charge, Accra, Ghana. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nigeria who entered the United States as a visitor in 1976. The applicant was found to be 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), for having been convicted of a crime involving moral turpitude; § 212(a)(2)(A)(i)(II), for a controlled substance violation; § 212(a)(6)(C)(I), for having attempted to procure a benefit under the Act through fraud or willful misrepresentation; and § 212(a)(9)(B)(i)(I), for having been unlawfully present in the United States for over 180 days but less than one year and seeking readmission within three years of his last departure. The record indicates that the applicant is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to remain with his wife in the United States.

The acting officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse, and the application was denied accordingly. On appeal, the applicant asserts that he was never incarcerated for any of his offenses, and that the activities for which he is inadmissible occurred over fifteen years before the date of his application for adjustment of status. The former assertion has no bearing on inadmissibility under § 212(a)(2)(A)(i)(I) of the Act. Regarding the latter, the AAO notes that the applicant was arrested for possession of marijuana in 1996, which is less than fifteen years prior to this adjudication. The applicant was also convicted of theft in 1977 and 1979, and of assault in 1977, all of which occurred over fifteen years ago.

On appeal, the applicant maintains that he was not in the United States unlawfully at any time. The section of law cited by the acting officer in charge, § 212(a)(9)(B)(i) of the Act, provides that:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such aliens' departure or removal is inadmissible.

(II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The acting officer in charge did not elaborate on the dates that the applicant was unlawfully present in this country. Since the applicant's legalization application was denied and his appeal was dismissed in 1993, and he remained in the United States unlawfully until 2001, he is subject to the ground of inadmissibility set forth at § 212(a)(9)(B)(i)(II) of the Act. The applicant accrued unlawful presence from April 1, 1997, the date of

enactment of unlawful presence provisions under the Act, until his departure in 2001. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his departure from the United States. The applicant is thus inadmissible to the United States under § 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B) provides for a waiver of this bar as follows:

(v) Waiver. – The Attorney General [now Secretary, Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Regarding the § 212(a)(6)(C)(I) basis for inadmissibility, the applicant asserts that he did not willfully fail to reveal his prior arrests when applying for an immigrant visa. The Applicant contends that his legal representative prepared the Application for Immigrant Visa and Registration, OF-230, and the applicant did not review it prior to submission. The applicant points out that he included full information regarding his arrests on the Form I-601 Application for a Waiver of Inadmissibility, which was submitted at the same time as the above-mentioned application for an immigrant visa. The AAO finds that the applicant had the responsibility of reviewing the OF-230 before submitting it, and the fact that another individual prepared his visa application does not absolve him of this duty. He is responsible for the statements made on his visa application, and his omission of material, negative information renders him subject to the bar described at § 212(a)(6)(C)(I).

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides a waiver of this bar, as follows:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

8 U.S.C. § 1182(i)(1). Hardship to the alien himself is not a permissible consideration under the statute. A § 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. In the instant case, the applicant's qualifying relative is his wife.

With respect to the applicant's criminal violations, § 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.

On June 30, 1996, the applicant committed the offense of possession of less than two ounces of marijuana, in violation of Texas VHSC § 481.121. This crime is considered to be a class B misdemeanor; nevertheless, it still qualifies as a crime involving moral turpitude for which the applicant is inadmissible.

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

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

According to the July 3, 1996 affidavit for the warrant for the applicant's arrest, the applicant was in possession of three grams of marijuana. He was convicted of a single offense of simple possession, and, since the quantity of marijuana he possessed was three grams, his crime falls within the waiver described above. The applicant's other crimes must be analyzed, however, pursuant to waiver provisions under § 212(h) of the Act, which 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)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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

(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.

The applicant was convicted over fifteen years ago of theft (shoplifting) twice and third degree assault. The latter was a simple assault, which is not considered to be a crime involving moral turpitude. *See Matter of Fualaau*, 21 I&N Dec. 475, 476 (BIA 1996). The evidence on the record does not indicate that the applicant's theft offenses included the use of force, weapons, or threats, or that the applicant shoplifted items of significant value. In sum, there is no evidence on the record that the applicant's admission to the United States would endanger the national welfare, safety, or security.

The record contains evidence establishing that the applicant has been rehabilitated. He had no convictions between 1979 and 1997 (for the simple possession of three grams of marijuana), and no convictions from 1997 to the present time, a period of eight years. The applicant has been working as an accountant continuously since 1985, has donated items of value to charities over the years, and has been married to a U.S. citizen since 1987.

The record establishes the applicant's eligibility for a waiver under § 212(h)(1)(A) of the Act, due to the length of time that has passed since his offenses, the lack of danger to the community presented by the applicant, and his apparent rehabilitation. The applicant's single conviction of simple possession of less than 30 grams of marijuana is also waived pursuant to § 212(h) of the Act.

As the applicant is inadmissible under §§ 212(a)(6)(C)(i) and (a)(9)(B)(i)(I) of the Act, 8 U.S.C. §§ 1182 (a)(6)(C)(i) and (a)(9)(B)(I), the record will be analyzed for eligibility for a waiver under §§ 212(i) and 212(a)(9)(B) of the Act. It is noted that although the bar resulting from inadmissibility under § 212(a)(9)(B)(i)(II) remains for ten years from the alien's last departure, the bar resulting from the misrepresentation provision of § 212(a)(6)(C)(i) is indefinite. The hardship standard the applicant must meet is the same, however; therefore, the analysis of eligibility under both waivers will be explained in a single discussion below.

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 Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside 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. The BIA has held:

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).

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).

On appeal, the applicant makes no particular assertions regarding any hardship his wife might suffer. In his original I-601 application, the applicant asserted that his wife would suffer extreme hardship if he were removed, because she would be unable to enjoy the retirement lifestyle that the couple had planned. The applicant also wrote that his wife would suffer extreme stress, and she would have to forfeit all property and accumulated possessions.

The situation described by the applicant is not taken lightly; however, it is not extraordinary or extreme. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record fails to establish that the applicant’s wife would suffer greater hardship than the unfortunate but expected difficulties arising when a spouse is removed from the United States. The AAO therefore finds that the applicant failed to establish extreme hardship to his wife as required under INA §§ 212(i) and 212(a)(9)(B), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B).

In proceedings for application for waiver of grounds of inadmissibility under §§ 212(i) and 212(a)(9)(B) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.