



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

Date:

IN RE: [REDACTED]

SEP 07 2005

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration Attaché, Manila, 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 a crime involving moral turpitude. 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 and reside with her U.S. citizen spouse.

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 May 6, 2004.

On appeal, the applicant contends that her U.S. citizen spouse cannot leave his job in the United States and work in Fiji. *Applicant's Statement on Form I-290B*. The applicant submits letters written by her spouse in which he expresses that he is suffering from emotional hardship due to being separated from the applicant. *Letters from Applicant's Spouse in Support of the Appeal*.

The record contains a statement from the applicant on Form I-290B; letters written to the applicant by her spouse; receipts from money orders showing funds transferred to the applicant from her husband; an addendum to Form I-601 executed by the applicant; statements from the applicant and her spouse in support of the original Form I-601, Application for Waiver of Ground of Excludability; an official document from the government of Fiji reflecting that the applicant and her spouse are married; a copy of the birth certificate of the applicant's spouse, and; copies of documentation of the applicant's criminal conviction. 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.

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 [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 a crime involving moral turpitude. Specifically, on September 29, 2000, the applicant was convicted of larceny (shoplifting) under section 259 and 262(1) of the Penal Code, Act 17 of Suva, Fiji. Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest her inadmissibility on appeal.

The AAO notes that section 212(h) 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. Section 212(h)(1)(B) of the Act. Hardship the applicant herself experiences upon being found inadmissible 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 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 her U.S. citizen spouse cannot leave his job in the United States and work in Fiji. *Applicant's Statement on Form I-290B*. In letters authored by the applicant's spouse, he expresses that he is experiencing emotional hardship due to his separation from the applicant. *Letters from Applicant's Spouse in Support of the Appeal*. The applicant's spouse indicates that he would like the assistance of the applicant in completing daily chores. *Id.* The applicant's spouse comments on his dissatisfaction with the government of Fiji, and he states that he purchased a home in the United States in which he, the applicant, and her family can reside. *Id.* In a statement from the applicant's spouse submitted in support of the original Form I-601 application, he referenced his and the applicant's children. *Statement from Applicant's Spouse in Support of Form I-601*. The applicant submitted wire transfer receipts to show that her spouse has been transferring money to her abroad.

Upon review, the applicant has not established that her spouse will suffer extreme hardship as a result of her inadmissibility. The applicant's spouse indicates that he is experiencing emotional hardship due to the applicant's absence. However, the applicant has not established that this consequence goes beyond that which is 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 evidence of record reflects that the applicant's spouse is sending money to her in Fiji. However, the applicant has not shown that such transfers are an economic burden to her spouse, or that he is unable to maintain his financial position while transferring funds to her abroad. Moreover, the U.S. Supreme Court additionally 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 applicant comments that her spouse cannot leave his job in the United States to work in Fiji. The applicant's spouse further expresses his dissatisfaction with the government of Fiji. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant has not provided documentation or clear explanation regarding her spouse's employment opportunities in Fiji, or his ties to his employment in the United States. Thus, the applicant has not shown that, should her spouse relocate to Fiji, her spouse would be unable to find suitable employment. 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)).

The applicant's spouse makes reference to his children and the applicant's children. However, the record reflects that the applicant's spouse has not fathered any children, while the applicant has four children who were born in Fiji. As the applicant is a national of Fiji and her children were born in Fiji, it is assumed that they are citizens and residents of Fiji and thus not qualifying relatives under section 212(h)(1)(B) of the Act. It is further noted that the applicant has not indicated that her children will suffer hardship as a result of her inadmissibility. Accordingly, the applicant has not shown that she has qualifying relatives in addition to her spouse.

Based on the foregoing, 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.