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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H/2

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: MIAMI (TAMPA)

Date: JUN 22 2006

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:

[REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica 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 remain in the United States with his U.S. citizen wife and children.

The district director 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 District Director*, dated August 13, 2002.

On appeal, counsel for the applicant contends that the applicant's wife and children will suffer extreme hardship if the applicant is prohibited from remaining in the United States, and that the district director failed to review the statements from the applicant's family members. *Brief from Counsel*, dated September 12, 2002.

The record contains statements from the applicant, the applicant's wife, the applicant's mother-in-law, and the applicant's daughter's mother; a copy of the birth certificates of the applicant and his son; a copy of the marriage certificate of the applicant and his wife; a copy of medical records for the applicant's alleged daughter; a letter from a licensed mental health counselor regarding treatment the applicant's wife is receiving; an illegible copy of a document purported to be a prescription for antidepressants for the applicant's wife; documentation to show that the applicant was treated for a sprained back; a letter verifying the applicant's wife's employment; a copy of the applicant's Form I-94, 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.

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) (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 was convicted of “shop breaking and larceny” in Kingston, Jamaica on February 22, 1993, for which he was sentenced to two years of hard labor. On November 12, 1997, the applicant was convicted of battery-domestic violence in the County Court of Lee County, Florida. There is ample precedent to find that each of these offenses constitute crimes involving moral turpitude. *See Matter of Tran*, 21 I&N Dec. 291 (BIA 1996); *Grageda v. I.N.S.*, 12 F.3d 919 (9th Cir. 1993); *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982); *Okoro v. INS*, 125 F.3d 920, 926 (5th Cir. 1997); *Matter of Alacron*, 20 I&N Dec. 557 (BIA 1992). Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

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 wife or children. *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.

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).

On appeal, the applicant contends that his wife and children will suffer hardship if he is compelled to depart the United States. *Statement from Applicant*, dated June 13, 2002. He indicates that he has three children who are U.S. citizens. *Id.* The applicant states that he has been employed with his current employer for over five years, and he provides health and life insurance for his family. *Id.* He indicates that he would not have promising job prospects in Jamaica, and thus his family would suffer economic hardship. *Id.* The applicant explains that his children are accustomed to life in the United States, and that relocating to Jamaica would constitute a hardship for them. *Id.*

The applicant's wife explains that the applicant plays an important role in his family, particularly financially. *Statement from Applicant's Wife*, dated June 13, 2002. She indicates that the applicant has a good relationship with their children, and he serves as a father figure. *Id.* She states that she is employed as a certified nursing assistant, yet the applicant's employment is more stable and lucrative. *Id.* She states that she and the applicant are responsible for significant medical bills, as their daughter and son each had major surgeries which were not fully covered by their health insurance. *Id.* She explains that she would not be able to meet her and her children's economic needs without the applicant's assistance. *Id.* She states that the applicant would not be able to provide for himself in Jamaica and his family in the United States simultaneously. *Id.* She notes that she would not be able to afford for her or her children to visit the applicant should he return to Jamaica. *Id.*

The applicant's mother-in-law provides that the applicant serves as a father figure to his children, and that he provides financial support for his family. *Statement from Applicant's Mother-in-law*, dated May 27, 2002.

The record contains a letter from [REDACTED], in which she provides that the applicant is the father of her daughter. *Statement from [REDACTED]*, dated May 29, 2002. She states that the applicant is involved in their daughter's life, and that he provides financial support for her. *Id.*

Counsel contends that the applicant's wife and children will suffer significant economic hardship if the applicant departs the United States. *Brief from Counsel*, dated September 12, 2002. Counsel discusses the health condition of the applicant's alleged daughter, Lateria, including surgery she received at age 14 to remove her left ovary and fallopian tube. *Id.* at 2. Counsel asserts that if the applicant departs the United States and his health insurance is discontinued, the applicant's wife would likely be unable to secure new insurance that would cover [REDACTED] pre-existing conditions. *Id.* at 3. Counsel speculates that health care in Jamaica would not be sufficient should the applicant's wife and children relocate there. *Id.* Counsel notes that the applicant's wife is experiencing emotional difficulty due to the prospect that the applicant will be deported, which has compelled her to seek treatment from a mental health professional. *Id.* at 4. Counsel indicates that the applicant's wife has begun to take anti-depressant medication. *Id.* Counsel provides that the applicant suffered a work-related back injury, and that the extent of his injury is presently unknown. *Id.* at 5. Counsel states that this injury further calls into question the applicant's capacity to generate income in Jamaica should he return there. *Id.*

Upon review, the applicant has failed to show that a qualifying relative will suffer extreme hardship should he be prohibited from remaining in the United States. The applicant states that he has a U.S. citizen wife and three U.S. citizen children. However, the applicant has not submitted sufficient documentation to show that he in fact has three children. The record contains a copy of the applicant's son's birth certificate from the State of Florida, which establishes that he and his wife have a U.S. citizen child. However, the applicant has not provided birth certificates for the two girls he claims are his daughters. It is further noted that the applicant did not list his two alleged daughters on the Form I-485, Application to register Permanent Residence or Adjust Status, that he filed on June 10, 1996, despite the fact that the form instructed him to list "all of [his] sons and daughters" in Part B. Nor did the applicant list his two alleged daughters on his Form I-601 waiver application. The only evidence to show that the applicant is the father of the child of [REDACTED] consists of statements from the applicant and [REDACTED]. However, these statements are not

sufficient to establish that the applicant is in fact the father of _____ child, or to show that _____ child is a U.S. citizen or permanent resident. Additionally, the only evidence to show that _____ is the applicant's step-daughter consists of statements from the applicant and the applicant's wife. Without a copy of _____'s birth certificate or other official documentation, the AAO cannot determine that _____ is in fact the child of the applicant's wife, such that she is the applicant's step-daughter. The AAO further cannot determine whether _____ is a citizen or permanent resident of the United States. 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)). Based on the foregoing, the applicant has not provided adequate evidence to show that he in fact has two daughters who are qualifying relatives.

The AAO has carefully reviewed the medical records for _____ and sympathizes with the significant challenges this young person has faced and will likely continue to face. Despite the fact that the applicant has not established that _____ is his step-daughter, the AAO has reviewed the documentation in an effort to discover evidence that the applicant or his wife are responsible for related medical bills, as such responsibility would have a bearing on the applicant's wife's economic needs and possible hardship should she be deprived of the applicant's assistance. However, the applicant has not submitted any evidence to show that he or his wife are responsible for _____ medical expenses, such as medical bills or insurance records. Again, 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. at 165. Thus, while _____ situation is unfortunate, the applicant has not shown that her circumstances contribute to hardship to a qualifying relative.

The applicant's wife explains that their son underwent surgery to have his tonsils and adenoids removed. However, the applicant has not submitted any documentation of this surgery. Nor has the applicant indicated that his son requires follow-up care, or that the applicant and his wife are responsible for outstanding medical bills related to this condition. Again, 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. at 165.

The record contains references to the applicant's wife's mental health status, including a letter from Therese _____ licensed mental health counselor, attesting that the applicant's wife is being treated for a major depressive disorder in individual psychotherapy sessions. _____ indicated that she had met with the applicant's wife on two occasions, and she recommended a course of weekly sessions. *Letter from _____* dated September 27, 2002. However, the brief letter from _____ does not fully explain the nature or severity of the applicant's wife's condition, the effect such condition has on her capacity to engage in daily functions such as work or childcare, or an opinion regarding the likelihood or duration of recovery. _____ does express that "life stressors, including [the applicant's] immigration case and the uncertainty of its outcome have exacerbated [her] depression." *Id.* This statement clouds an understanding of whether the prospect of the applicant's deportation constitutes a major contributor to the applicant's wife's depression. _____ observation that the applicant's immigration situation has exacerbated his wife's depression implies that her depression was a pre-existing condition, rather than a direct consequence. The applicant submitted an illegible copy of a document purported to be a prescription for anti-depressant medication for his wife. Yet, as the document cannot be deciphered, the AAO is unable to consider it as evidence in this proceeding.

The record contains evidence to show that the applicant received treatment for a sprained back on September 23, 2002. Counsel provides that the extent of the injury is presently unknown, and that this injury calls into question the applicant's capacity to generate income in Jamaica should he return there. The applicant's documentation shows that a physician cleared him to return to work on September 26, 2002, yet he was limited to lifting ten pounds. On October 3, 2002, the applicant was cleared by a physician to lift twenty pounds. The applicant submitted no documentation from a medical professional that expresses an opinion regarding the likelihood that he will make a full recovery. The fact that the applicant's ability improved between September 26, 2002 and October 3, 2002 suggests that his status is improving. Thus, the applicant has not established that he suffered a permanent injury that limits his ability to perform his job duties, or impairs his ability to secure employment in Jamaica.

The record contains numerous references to financial hardship that the applicant's wife and children will suffer should the applicant be prohibited from remaining in the United States. However, the applicant has not provided clear documentation to show what are his household's regular expenses, such as copies of bill statements, recent tax records, or evidence of lease, mortgage, or automobile payments. Nor has the applicant provided documentation to show what is his or his wife's current income or other financial resources. The applicant's wife stated that she works as a certified nursing assistant, thus it is evident that she is capable of generating income. Without sufficient documentation or explanation regarding the economic situation of the applicant's wife and children, the AAO is unable to properly assess the financial impact the applicant's departure would have on them. While counsel asserts that the applicant would have limited employment prospects in Jamaica, the record contains no discussion of the applicant's particular job skills or their applicability in the current Jamaican market. Without independent documentation, counsel's speculation will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Based on the foregoing, the applicant has not shown that his wife or children would suffer economic consequences that amount to extreme hardship.

The applicant's wife expresses that the applicant plays an important emotional role for her and his children, and that she wishes to maintain their family unity. The AAO acknowledges that the applicant's wife and son will bear significant psychological consequences should they be separated from the applicant, or if they relocate with him to Jamaica to maintain family unity. However, based on the above discussion, the applicant has not established that these effects go beyond those which are commonly experienced by the families of individuals 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 record contains little discussion regarding the consequences of the applicant's wife or son relocating to Jamaica with him. As English is widely spoken in Jamaica, it is evident that they would not be compelled to adapt to a new language should they move there. Yet, the applicant's wife's statement implies that she and her children will remain in the United States if the applicant departs. As U.S. citizens, the applicant's wife and son are not required to reside outside of the United States as a result of the applicant's inadmissibility.

All prospective hardships to the applicant's wife and son have been considered individually and in aggregate. Based on the foregoing, the applicant has not submitted sufficient documentation to show that, should he be prohibited from remaining in the United States, his family members will suffer emotional hardship that goes beyond that which would normally be expected upon deportation. The applicant has not established that his wife's health status will result in extreme hardship due to his inadmissibility. The applicant has not shown that his wife or son will experience extreme economic consequences 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 wife or son 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.