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U.S. Citizenship
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FILE: [REDACTED] Office: MIAMI, FL

Date: APR 17 2007

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:



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, Florida. 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 Haiti 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), as an alien convicted of crimes involving moral turpitude. The record indicates that the applicant is the father of three United States citizen children. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's children and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated March 22, 2005.

On appeal, the applicant, through counsel, asserts that that District Director "erred in his decision denying the Applicant's application for a waiver of grounds of excludability." *Form I-290B*, filed April 21, 2005. Counsel claims that the "applicant has additional evidence that was not available at the time" the District Director adjudicated the waiver. *Id.* The AAO notes that the additional evidence submitted by counsel was a birth certificate for the applicant's third United States citizen child, who was not born when the District Director adjudicated the applicant's waiver.

The record includes, but is not limited to, counsel's brief, a statement by the applicant, court dispositions from the Criminal Division of the Palm Beach County Court, and birth certificates for the applicant's three children. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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...

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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

(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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that on January 18, 1992, the applicant was paroled into the United States at the U.S. Naval Base in Guantanamo, Cuba, in order for the applicant to file an Application for Asylum (Form I-589). The applicant filed an asylum application, which was denied by an immigration judge on October 17, 1995. The applicant then filed an appeal to the Board of Immigration Appeals (BIA). On March 18, 1996, the applicant married a United States citizen. On May 16, 1996, the applicant's wife filed a Petition for Alien Relative (Form I-130). The BIA dismissed the applicant's appeal on September 9, 1996. On October 29, 1996, the applicant's Form I-130 was approved. On November 26, 1996, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on his approved I-130. On June 28, 1998, the applicant was arrested in West Palm Beach, Florida, for domestic battery and failure to appear for a charge of aggravated battery. On September 17, 1998, the County Court judge convicted the applicant of Domestic Battery, in violation of Florida Statutes § 784.03, for attacking his girlfriend, and sentenced the applicant to one year of probation. Additionally, on September 17, 1998, the applicant was convicted of Battery, in violation of Florida Statutes § 784.02, for stabbing his girlfriend with a knife, and was sentenced to 89 days in jail. On February 14, 2000, the applicant filed a Form I-601 and another Form I-485, based on the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA). On March 26, 2000, the District Director denied the initial Form I-485, finding the application was abandoned, because the applicant failed to appear to his March 23, 2000 interview. On September 7, 2000, the District Director denied the applicant's second Form I-485, finding the application was abandoned, because the applicant failed

to appear to his September 7, 2000 interview. On July 9, 2001, the applicant, through counsel, filed a motion to reconsider, stating the original Form I-485 was based on an alien petition, but he wanted to pursue the second Form I-485, which was based on HRIFA. The District Director reopened the applicant's Form I-485. On May 12, 2004, the applicant filed a Form I-601. On March 22, 2005, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his three United States citizen children. Based on the applicant's two convictions for battery, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen children. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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.

Counsel asserts that if the applicant is removed from the United States, it would cause extreme hardship to the applicant's three United States citizen children. *Appeal Brief*, page 2, dated May 18, 2005. The applicant states he plays a "significant part in [his children's] lives as a caregiver and the primary provider." *Statement by the applicant*, filed May 12, 2004. Counsel states the applicant "provides financial and emotional support to [redacted] see the Applicant on a daily basis and receive all necessary support from their father daily...He is their principal source of financial support." *Appeal Brief*, page 2, *supra*. The mother of [redacted] states the applicant "is the father of [redacted] and he take [sic] care of her." *Letter by [redacted]*, undated. The mother of J [redacted] states the applicant is "the one who takes care of her and [her] daughter [redacted] adores him very much and she can't stay with out [sic] him he's [sic] the only one she has after me." [redacted] undated. The AAO notes that the two letters by the applicant's children's mothers are undated and not notarized. Additionally, there was no documentation submitted establishing that the applicant contributes to his children financially or that he is the primary provider and caregiver to his children. Counsel claims the applicant's daughter, [redacted] "was born with an abnormal hole in her heart," which "requires medical examination[s] from a specialist every six months." *Appeal Brief*, page 3, *supra*. The AAO notes that counsel requested time to submit the medical documents; however, there was no medical documentation submitted on [redacted] medical condition. Additionally, counsel claims the applicant's daughter, [redacted] "is developing a problem on her right eye." *Id.* There has been no medical documentation

submitted regarding [REDACTED] medical condition. Counsel states the applicant "regrets the mistakes that he made and that led to his two convictions for domestic battery...However, since 1998 he has maintained a clean record." *Id.* Counsel contends that the applicant's children cannot accompany the applicant to Haiti, because of the current "political and social turmoil" in Haiti and the children "do not know the language of that country." *Id.* at 2. The applicant states his children "would suffer significantly trying to adjust to a lifestyle in Haiti. English is the only language that they speak...[t]hey would be at [an] extreme disadvantage in the education system in Haiti and therefore they may be denied the opportunity for an education." *Statement by the applicant, supra.* The AAO notes that the applicant failed to mention the medical condition suffered by his daughter, Gisele.¹ The AAO finds the applicant failed to establish that his children would suffer extreme hardship if they accompanied him to Haiti. The applicant failed to demonstrate whether or not he has any family ties in Haiti, that could help with the children. Additionally, the applicant's children are young enough, 2, 4, and 11 years old, and no evidence was submitted to establish that they could not adjust to the culture of Haiti.

In addition, counsel fails to establish extreme hardship to the applicant's children if they remain in the United States. The applicant failed to provide any evidence that he contributes anything to his children, and it appears they all live with their mothers. As United States citizens, the applicant's children are not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, beyond generalized assertions regarding country conditions in Haiti, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States court decisions have repeatedly 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit 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 AAO recognizes that the applicant's children will endure hardship as a result of separation from the applicant. However, their situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's children caused by the applicant's inadmissibility to the United States. Having found the

¹ The AAO notes that the applicant would not have mentioned [REDACTED] medical condition, because his statement was filed before [REDACTED] was born.

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(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.