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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 30 2007**

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the  
Immigration and Nationality Act (INA), 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 crimes involving moral turpitude. The record indicates that the applicant is the son of a U.S. citizen and seeks a waiver of inadmissibility in order to reside with his father in the United States.

The director found that the applicant had failed to establish extreme hardship to a U.S. citizen spouse, parent or child. The application was denied accordingly. *See Director's Decision*, dated May 26, 2006.

On appeal, counsel asserts that the applicant is the son of a U.S. citizen and the father of two U.S. citizens. Counsel also asserts that the applicant's father, step-mother and children will suffer extreme hardship as a result of the applicant's inadmissibility. *Counsel's Brief*, dated September 27, 2006.

The AAO notes that in support of her claims regarding the applicant's two U.S. citizen children counsel submits birth certificates for a [REDACTED] and a [REDACTED] however neither of these birth certificates identifies the applicant as the father. Instead no father is designated. In addition, the applicant submitted a copy of a 1998 tax return showing [REDACTED] listed as a dependant of the applicant, but the return does not show that these documents were officially filed with the Internal Revenue Service. Therefore, the record does not establish that the applicant is the father of two U.S. citizen children and only the hardship his U.S. citizen father would suffer will be considered.

The record indicates that the applicant was convicted of grand larceny on October 23, 1992 for events that occurred on September 19, 1992; assault on March 4, 1997 for events that occurred on March 30, 1996; and criminal possession of a forged instrument on two occasions, the first on August 9, 2000, for events that occurred on June 12, 2000 and the second on October 10, 2002, for events that occurred on July 11, 2002.

Section 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.

Section 212(h) states 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 events leading to the applicant's four convictions occurred less than 15 years ago. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

A section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien experiences due to separation is not considered in section 212(h)(1)(B) waiver proceedings unless it causes hardship to his or her spouse, children and/or parent.

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 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that extreme hardship to the applicant's father must be established in the event that he resides in Jamaica or in the event that he resides in the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his father in the event that he resides in Jamaica. In her brief, counsel states that the applicant's father and step-mother have no remaining family members in Jamaica and have extensive family ties in the United States. *Counsel's Brief*, dated September 27, 2006. The record indicates that the applicant's father's five daughters, grandchildren, brothers and sisters live in the United States. Counsel explains and documents the medical concerns related to the applicant's father. Counsel states that the applicant's father suffered a stroke in March 2005, has been unemployed since that time and is now permanently disabled. She states that he has been hospitalized twice as a result of this stroke and is unable to engage in his daily activities without assistance. *Id.* The applicant's father also suffers from diabetes, a torn rotary cuff and high cholesterol. To establish the applicant's father's medical condition, counsel submits a hospital discharge report, a letter from [REDACTED] a report of the electrodiagnostic study conducted on the applicant's father from a [REDACTED] and two radiology reports. The letter from [REDACTED] states that the applicant's father has been his patient for seven years and suffers from diabetes with poor control. [REDACTED] also states that the applicant's father suffered a stroke and remains totally disabled as a result of this stroke and other damage to his shoulder. *Letter from* [REDACTED] [REDACTED] dated August 21, 2006.<sup>1</sup> [REDACTED] report concludes that the electrodiagnostic studies of the applicant's father are consistent with peripheral neuropathy. *Report on* [REDACTED] dated February 14, 2006.

In addition to the applicant's father's health concerns, counsel states that the applicant has serious health concerns including diabetes, epileptic seizures and diabetic comas. *Counsel's Brief*, dated September 27, 2006. She explains that the applicant was diagnosed with diabetes at the age of 11 and as a result of the disease had to have his left leg amputated with his right leg also being at risk. *Id.* In support of these assertions, counsel submitted a letter from [REDACTED] at Lutheran Family Health Center. [REDACTED] states that the applicant has been a diabetic for 27 years and had a left below knee amputation in September 2003. *Letter from* [REDACTED], dated May 12, 2006. [REDACTED] also states that the applicant has been suffering from Seizure Disorder for five years. He explains that the applicant is alert and oriented, but his diabetes is not well controlled at this time. He also states that the applicant has an ulcer on his right fifth toe for which he is taking antibiotics. *Id.* The AAO finds that due to the applicant's medical condition, he would be unable to care for his father upon relocation to Jamaica and there would be no other family members in Jamaica to help care for the father. Thus, the AAO finds that because of the applicant's father's severe disabilities, the applicant's disabilities and the father's extensive family ties to the United States it would be an extreme hardship for the applicant's father to relocate to Jamaica.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his father remains in the United States with the care of his doctors and family. Counsel asserts that the applicant's father's condition has been adversely affected by the applicant's immigration situation. *Counsel's Brief*, dated September 27, 2006. She states that if the applicant is removed to Jamaica there would be no one to care for him there. *Id.* The AAO notes that, as stated above, hardship to the applicant is not considered in section 212(h)(1)(B) waiver proceedings unless it is shown that hardship to the applicant will cause hardship to the applicant's father or other qualifying relative. Counsel asserts that the hardship faced by the applicant in Jamaica will cause the applicant's father extreme hardship. In support of these assertions, counsel submits a psychological evaluation from [REDACTED], a licensed clinical social worker, which includes a statement taken from the applicant's father. [REDACTED] states that as a result of the applicant's multiple

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<sup>1</sup> The AAO notes that [REDACTED] letter is handwritten and illegible in parts.

diabetic comas and seizure disorder, the applicant has suffered a personality change with intellectual and cognitive deficits. *Psychological Report*, dated August 23, 2006 [REDACTED] states that the applicant's father would be unable to cope or continue with his life in any meaningful way in the applicant's absence. He states that the applicant's father fears that if the applicant is removed to Jamaica, he will be helpless and extremely vulnerable. According to [REDACTED] the applicant's father contends that knowing the applicant would be suffering alone in Jamaica would be unbearable [REDACTED] also states that the family greatly fears the loss of the applicant's healthcare, education, employment, family, friends, social service supports and community contacts if he is forced to live in Jamaica where there is economic devastation and other difficulties that would prevent him from living a safe and healthy life. *Id* at page 2-3. In his report, [REDACTED] notes the physical and mental condition of the applicant as being poor. He states that although the applicant was interviewed as part of the evaluation, he contributed very little substantive material due to the intellectual and cognitive disabilities he has suffered since his first diabetic coma and seizure about 10 years ago. [REDACTED] states that the applicant could not answer many relevant questions concerning when he became ill, the medications that have been prescribed to him, major life events and gave generally evasive answers about his medical care and prognoses. *Id* at page 9. As part of his psychological evaluation, [REDACTED] took a personal statement from the applicant's father. In this statement, the applicant's father explains how he will feel if his son is sent back to Jamaica:

If [REDACTED] should be sent back to Jamaica, He will be on his own, Myself and the entire family would not be able to live a normal life anymore, We would be worried every minute of the day, not knowing what is happening to my son in Jamaica. We would be faced with extreme hardship, both mentally and financially....

[I]f [REDACTED] should be separated from us our lives would be torn apart, life would not be the same anymore without [REDACTED] Life in Jamaica is very hard, poverty is very high in such a small island and since [REDACTED] is so handicapped by his sickness He would be dead in a very short time, not having any immediate family members to see to his well being. *Id* at page 15.

The AAO notes that the 2006 State Department Country Report for Human Rights Practices in Jamaica states that Jamaica has no laws prohibiting discrimination against persons with disabilities nor any laws mandating accessibility for persons with disabilities, and that disabled persons encountered discrimination in employment and denial of access to schools. Taking into consideration the totality of the circumstances, including the applicant's father's statements, the applicant's severe medical condition, the applicant's father's disabilities and inability to relocate to Jamaica, the absence of any support network in Jamaica and the country conditions in Jamaica, the AAO finds that the applicant's father would suffer extreme emotional hardship if the applicant were to return to Jamaica and he remained in the United States.

The record establishes the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's four criminal convictions. The favorable factors in the present case are the extreme hardship to the applicant's father; the extreme hardship the applicant would suffer if found inadmissible, the lack of a criminal record or offense since 2002 and extensive family ties in the United States.

The AAO finds that the crimes committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.