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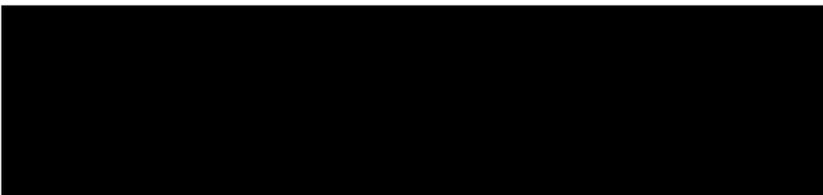
Date: JUL 17 2007

IN RE:



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 Director, California Service Center. A motion to reconsider was filed and denied by the Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the previous decisions of the Director will be affirmed.

The AAO notes that on appeal, the applicant, through counsel, requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed August 6, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. On July 6, 2007, the AAO sent counsel a facsimile requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed; however, the AAO received no reply from counsel. Therefore, the record must be considered complete.

The record reflects that the applicant is a native and citizen of Mauritania who was found to be inadmissible to the United States pursuant to sections 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 a crime involving moral turpitude. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 spouse and children.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated April 27, 2006. On May 26, 2006, the applicant, through counsel, filed a motion to reconsider, which was denied by the Director. *Director's Decision*, dated July 5, 2006.

On appeal, the applicant, through counsel, contends that the Director "improperly denied the applicant's Motion to Reconsider." *Form I-290B*, filed August 6, 2006. Counsel asserts that the "Director incorrectly determined that there was no evidence of extreme hardship to the applicant's United States citizen spouse and children." *Id.*

The record includes, but is not limited to, a statement by the applicant's wife, reference letters from the applicant's friends and acquaintances, a psychological evaluation of the applicant's spouse and children, and court dispositions for the applicant's arrests and convictions. 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 the applicant initially entered the United States without inspection on August 18, 1996. On June 12, 1997, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589), which was granted by an immigration judge on September 18, 1998. On July 6, 1999, the applicant was convicted of being in possession of more than 15 unauthorized access devices affecting interstate commerce, under 18 U.S.C. § 1029(a)(3), and was sentenced to three (3) years probation. On March 5, 1999, the applicant married [REDACTED], a United States citizen, in Cincinnati, Ohio. On August 12, 1999, the applicant was again placed in proceedings based on his conviction; however, an immigration judge terminated those proceedings on April 10, 2003. On April 7, 2000, the applicant’s

daughter [REDACTED] was born, in Cincinnati, Ohio. On April 23, 2001, the applicant's wife filed a Form I-130 on the applicant's behalf. On April 12, 2002, the Form I-130 was approved. On August 13, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On August 16, 2002, the applicant filed a Form I-601. On April 27, 2006, the Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives. On May 26, 2006, the applicant filed a Motion to Reconsider the Director's decision. On July 5, 2006, the Director denied the Motion to Reconsider.

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 spouse and 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 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.

Counsel asserts that the applicant's United States citizen spouse and children would face extreme hardship if the applicant were removed to Mauritania. [REDACTED] diagnosed the applicant's wife with Adjustment Disorder with Mixed Anxiety and Depressed Mood. *Psychological Evaluation of [REDACTED]* and [REDACTED] page 4, dated May 22, 2006. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized depression and anxiety disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. [REDACTED] stated that the applicant's stepson was "diagnosed with Attention Deficit Hyperactivity Disorder and is medicated on a daily basis for that disorder," and the applicant's daughter, [REDACTED] may also be diagnosed with Attention Deficit Hyperactivity Disorder, because of her behavior in school. *Id.* at 2. The AAO notes there were no professional evaluations on the applicant's children's mental problems for the AAO to review. Additionally, no documentation was submitted establishing that the applicant's wife and children could not receive treatment for their mental and psychological conditions in

Mauritania. The AAO notes that it has not been established that the applicant's children, who are 7 and 12 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mauritania. The AAO finds that the applicant has failed to establish extreme hardship to his United States citizen spouse and children if they accompany him to Mauritania.

In addition, counsel fails to establish extreme hardship to the applicant's spouse and children if they remain in the United States. As United States citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states it would be a hardship if the applicant were removed to Mauritania. *Affidavit from* [REDACTED], dated October 26, 2004. The AAO notes that the applicant's wife's mother also resides in Cincinnati and she visits her daughter and grandchildren "several times a week," and it has not been established that she could not help her daughter with caring for the children and home. *See Psychological Evaluation of* [REDACTED] *and* [REDACTED], page 3, *supra*. Counsel claims that the applicant's spouse will suffer financial hardship if the applicant is removed from the United States. *Motion to Reconsider*, filed May 26, 2006. The applicant's wife states the applicant "has been the main financial provider." *Affidavit from* [REDACTED] *supra*. However, the AAO notes that the applicant's wife works part-time and has a college degree, and it has not been established that she could not obtain employment to help with the household expenses. *See Psychological Evaluation of* [REDACTED] *and* [REDACTED] page 3, *supra*; *see also Affidavit from* [REDACTED] *supra*. Additionally, the AAO notes that the applicant's wife stated that she runs a business with the applicant and it has not been established that she could not continue to run the business without the applicant. *Affidavit from* [REDACTED] *supra*. The record fails to demonstrate that the applicant is 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 Court of Appeals 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 spouse will endure hardship as a result of separation from the applicant. However, her 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 spouse and children 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 sections 212(a)(2)(A) and 212(a)(2)(B) 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 and the previous decisions of the Director are affirmed.