



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: NEWARK, NJ

Date:

MAR 30 2007

IN RE:

Applicant:

[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, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant is a native and citizen of Saint Kitts and Nevis, 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 (criminal sexual contact.) The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director determined that the applicant had failed to establish his U.S. citizen wife would suffer extreme hardship if he were removed from the United States pursuant to section 212(a)(2)(A)(i)(I). The applicant's Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601 application) was denied accordingly.

On appeal the applicant asserts, through counsel, that his wife requires medical care and that he assists her with her medical needs. In addition, the applicant asserts that his wife will be unable to pay home and living expenses without his financial assistance. The applicant asserts that his wife will suffer extreme medical and financial hardship if he is removed from the United States, and he concludes that his Form I-601 application should therefore be approved. The applicant does not dispute the district director's finding that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2)

....
(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 [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

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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors deemed relevant for determining whether an alien has established extreme hardship. 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.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the Board held in part that:

[R]elevant 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. (Quotations and citations omitted.)

U.S. 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). In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), for example, the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The U.S. Ninth Circuit Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship.

In the present matter, the applicant asserts that his U.S. citizen spouse will suffer extreme medical and financial hardship if he is removed from the United States. To support his assertions, the applicant submits affidavits from himself and from his wife. The applicant also submits a letter listing his wife's medical conditions, and he submits financial obligation and income information.

The AAO finds the applicant has failed to establish that his wife would suffer extreme medical hardship if he were removed from the United States. The record contains a June 17, 2005, letter signed by Lorraine Riker RN, ANPC, stating that the applicant's wife:

[I]s being treated for Hypertension, hyperlipidemia and complications of Arthralgias caused by Spondylitis of the spine and shoulder. She has been receiving physical therapy for the past few months to improve her mobility and relieve her pain. Her medications include: Lotrel, lipitor,

hydrochlorthiazide, Atenolol for hypertension and high lipids; Skelaxin, Ultracet, and Lidoderm for pain.”

The AAO notes that the above letter is signed by a registered nurse rather than a medical doctor. The AAO notes further that the letter lacks material detail, and that the record contains no corroborative evidence to establish the level of medical care that the applicant’s wife requires, the frequency of such care, or that she requires in-home assistance from the applicant. The record also lacks corroborative evidence to demonstrate that the applicant’s wife has received medical treatment, when the treatment was received, or what she was treated for. In addition, the record lacks corroborative evidence to establish that the applicant’s wife has received prescriptions for any of the medicines listed in the letter, or to establish the need or effect of the medicine. Furthermore, the financial income evidence contained in the record reflects that the applicant’s wife continues to be employed full-time as a Nurses Aide, and that her ability to work has thus not been negatively affected by medical conditions.

The AAO finds that the applicant has also failed to establish that his wife would suffer extreme financial hardship if the applicant were removed from the United States. As noted above, the financial income evidence contained in the record reflects that the applicant’s wife is employed full-time as a Nurses Aide. The federal tax and income evidence reflects further that the applicant’s wife is the consistent, and primary wage earner in the applicant’s family. Furthermore, the AAO notes that “[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.” See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The record contains no evidence to demonstrate that the applicant’s wife would suffer other hardship if the applicant were removed from the United States pursuant to section 212(a)(2)(A)(I)(i). The record also contains no statements or evidence to indicate that the applicant’s wife would go with him to St. Kitts, or to indicate the effect that such a move would have.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. A review of the evidence in the record, when considered in its totality, reflects that the applicant has failed to establish that his wife would suffer hardship beyond that which would normally be expected upon removal. Accordingly, the AAO finds that the applicant has failed to establish that he is eligible for relief under section 212(h) of the Act. The present appeal will therefore be dismissed, and the Form I-601 application will be denied.

ORDER: The appeal is dismissed. The application is denied.