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[REDACTED]

FILE: [REDACTED] Office: MIAMI (JACKSONVILLE) FLORIDA Date: MAY 03 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 Officer in Charge, Jacksonville, Florida. 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 Canada 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 his ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The officer in charge determined the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. 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 the officer in charge did not properly review or analyze his hardship claim or evidence. The applicant asserts that the evidence in the record establishes that his wife and stepdaughter will suffer extreme hardship if he is unable to remain in the United States with them. The applicant concludes that his Form I-601 application should therefore be approved. The applicant does not dispute the 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.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. . . .

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

The record reflects that on December 5, 2002, the applicant was found guilty of Domestic Battery, in violation of Florida Statute § 784.03(1), and that on January 29, 2003 and March 7, 2002, he was found guilty of two Worthless Check offenses, in violation of Florida Statute § 832.05.

Florida Statute § 784.03(1)(a) provides that, "the offense of battery occurs when a person: 1) actually and intentionally touches or strikes another person against the will of the other; or 2) intentionally causes bodily harm to another person." Florida Statute § 832.05 provides in pertinent part that:

(2) It is unlawful for any person . . . to draw, make, utter, issue, or deliver to another any check, draft, or other written order on any bank or depository, or to use a debit card, for the payment of money or its equivalent, knowing at the time . . . that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation

See www.leg.stat.fl.us. The applicant does not dispute the finding that he has committed crimes involving moral turpitude, and the AAO finds that Florida statutory definitions clearly establish that the offenses committed by the applicant constitute crimes of moral turpitude for immigration purposes.

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)

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- (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.

The record reflects that the applicant married a U.S. citizen on August 11, 2004, and that he has a U.S. citizen stepdaughter, born January 8, 1990. The applicant's wife is a qualifying family member for section 212(h) of the Act extreme hardship purposes. Moreover, section 101(b) of the Act, 8 U.S.C. §1101(b) provides in pertinent part that:

As used in titles I and II- (1) The term "child" means an unmarried person under twenty-one years of age who is . . . (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.

The applicant's stepdaughter was under the age of eighteen at the time of the applicant's marriage to her mother. She therefore qualifies as a child and qualifying family member for section 212(h) extreme hardship purposes.

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 that it deemed relevant in 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

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 *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.

The applicant asserts that his wife and stepdaughter will suffer extreme emotional and financial hardship if he is not allowed to remain with them in the United States. The applicant additionally indicates that his biological son, born June 14, 1996, will suffer extreme hardship if the applicant's Form I-601 application is denied. To support his assertions, the applicant submits affidavits written by himself, his wife, his wife's mother, and his stepdaughter. The applicant also submits federal tax information, utility bills and evidence that he and his wife purchased their home.

In his affidavit, the applicant states in part that he does not presently have a relationship with his biological son, and that he hasn't seen his son in five years. The applicant indicates that he will try to get visitation with his son after he resolves his immigration status in the United States. The record contains no other information about the applicant's present relationship with his son, and the record contains no evidence to demonstrate the effect that the denial of the applicant's admission into the United States would have on his son. Accordingly, the AAO finds that the applicant failed to establish that his biological son would suffer extreme hardship if the applicant's Form I-601 application were denied.

The applicant's wife (Mrs. [REDACTED]) indicates in her affidavit that the applicant has helped her care for her disabled mother, who lives with them, by purchasing and obtaining her mother's medicine, and caring for her mother at home when Mrs. [REDACTED] works. Mrs. [REDACTED] additionally states that her daughter's natural father is not very involved in her daughter's life, and that the applicant is a father figure to her daughter because he is actively involved in her life and helps her with sports, schoolwork, and the purchase of her clothes. Mrs. [REDACTED] indicates that she began working with the applicant in his tree-service business after they married, and that for the first time in her life she does not have financial worries at home. Mrs. [REDACTED] additionally indicates that it would probably not be difficult for her to relocate to Canada with the applicant. She states, however, that she would not do so because it would be too difficult for her teenage daughter and disabled mother to relocate, and she would not leave them in the United States.

The applicant's stepdaughter states in her affidavit that her natural father is around sometimes, and that sometimes she does not hear from him for months. She states that unlike her natural father, the applicant is always there when she needs him, that he has helped her with schoolwork and projects, and that she loves and respects him as her stepfather. The applicant's stepdaughter indicates that she and her grandmother would not go to Canada if the applicant were denied admission into the United States, and she states that she does not know what she, her mother and her grandmother would do without the applicant.

The applicant submits an affidavit from his mother-in-law (Ms. [REDACTED]) stating that she has been totally disabled for 3 ½ years, and that she has lived with her daughter (Mrs. [REDACTED]) during that time. Ms. [REDACTED] states that the applicant has helped her to obtain medical care, and she states that the applicant is the sole supporter for her, Mrs. [REDACTED], and his stepdaughter. The record contains an application for U.S. Social Security benefits filed by Ms. [REDACTED] on April 25, 2005. The record does not reflect that the application was approved, and the record contains no other evidence to indicate that Ms. [REDACTED] is disabled, or that she requires or receives assistance from her daughter.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish that his wife or stepdaughter would suffer extreme hardship if his waiver of inadmissibility were denied and they remained in the United States. The record contains no medical evidence to corroborate the assertion that the applicant's mother-in-law is dependent on Mrs. [REDACTED], or to corroborate the assertion that Mrs. [REDACTED] relies on the applicant to help her care for her mother. In addition, the affidavit and federal tax evidence contained in the record fails to support the assertion that the applicant is the sole provider for the household. The AAO notes further 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). Furthermore, distress from being unable to reside close to family is not the type of hardship that is considered extreme. See *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship.) The AAO finds that the applicant has additionally failed to establish that his wife and stepdaughter would suffer extreme hardship if they moved with him to Canada. The applicant's wife and stepdaughter state that they will not move to Canada if the applicant's Form I-601 application is denied, and the AAO notes that no evidence was presented to establish that they would suffer extreme hardship upon relocation to Canada. Having found the applicant ineligible for relief, the AAO notes no purpose in discussing whether the applicant merits a waiver as a matter of discretion.

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. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed, and the application denied.

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