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U.S. Citizenship
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FILE:



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APR 10 2008

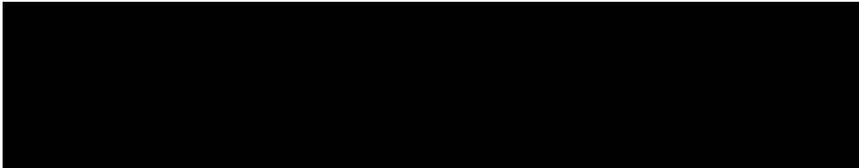
IN RE: Applicant:



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 PETITIONER:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan who entered the United States on February 25, 2000 as an F-1 student. He was found to be inadmissible to the United States under 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, conspiracy to commit interstate transport of stolen property and receipt and possession of stolen property. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) abused its discretion by failing to thoroughly analyze the facts and evidence in the case and in misapplying the law regarding extreme hardship. Specifically, counsel claims that CIS abused its discretion by failing to consider several factors related to the hardship the applicant’s wife would suffer, failed to consider the factors cumulatively, and did not give due consideration to concerns the applicant’s wife has about her safety in Jordan if she relocates there with the applicant. Counsel further asserts that the cases cited by CIS in the denial letter can be distinguished from the applicant’s situation. Counsel submitted additional evidence with the appeal to support the assertion that the applicant’s deportation would result in extreme hardship to his wife.

Section 212(a)(2)(A) of the Act states in pertinent part:

(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:

(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 applicant was convicted of conspiracy to commit interstate transport of stolen property and receipt and possession of stolen property in violation of 18 U.S.C. § 371, a felony, on October 8, 2004. The criminal conduct took place on or before January 22, 2004. *See Judgment, United States v. Amir Rasras, October 8, 2004.* A conviction for conspiracy to commit this crime, which requires knowledge that the goods have been stolen, converted or taken by fraud, involves moral turpitude and renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. *See* 18 U.S.C. § 2314. Since less than 15 years has passed since the criminal activity for which he was convicted, the applicant is 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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In December 2004, while the applicant's waiver application was still pending, the applicant's wife was sentenced to one year imprisonment for trafficking in cocaine. She began serving her prison sentence at the Ohio Reformatory for Women in Marysville, Ohio on December 22, 2004. Counsel asserts that CIS placed undue weight on this criminal conviction in denying the waiver application and further contends that the

moral character of a qualifying relative should not be considered when analyzing eligibility for a waiver under section 212(h) of the Act. A review of the decision indicates, however, that the moral character of the applicant's wife was not a basis for the denial. As counsel concedes, her incarceration while the waiver application was pending constituted a change of circumstances. As a result, most of the factors that the applicant's wife had claimed would result in extreme hardship if the applicant were deported no longer applied. In her affidavit submitted with the waiver application, she stated that she would suffer extreme hardship if she had to relocate to Jordan because she would lose her employment of ten years "along with all the seniority and benefits," including her health insurance. She would be separated from her family members, all of whom reside in Ohio, and would be separated from the doctor who was treating her for two herniated discs and other joint ailments. *See Affidavit of [REDACTED] dated November 22, 2004.* The district director evaluated these factors in light of the changed circumstances and found that due to her incarceration, the applicant's wife was no longer working for the employer mentioned in her affidavit and was no longer receiving the related benefits, including health insurance. She was also no longer being treated by the physician mentioned in the affidavit. The only potential hardship listed in the affidavit that would still be relevant was separation from her family members if she relocated to Jordan. Although acknowledged to result in some degree of hardship, the separation of the applicant's wife from her family was found in itself not to amount to extreme hardship. The decision also stated that because of the nature of the applicant's crime he was not entitled to a favorable exercise of discretion, but this finding was not material to the decision, as the district director found that the statutory requirement of extreme hardship to a qualifying relative was not met.

Counsel states that there are several factors that, when considered in the aggregate, would amount to extreme hardship to the applicant's wife if he were deported to Jordan. Additional evidence was submitted with the appeal to support this assertion, including an affidavit from the applicant's wife, copies of her medical records, documentation that they maintained contact while she was incarcerated in 2005, and a Consular Information Sheet on Jordan issued by the U.S. Department of State.

The record reflects that the applicant, a twenty-seven year-old native and citizen of Jordan, entered the United States in February 2000 and married his wife in November 2002. They resided together in Cincinnati, Ohio from that time until the applicant's wife was incarcerated in December 2004. While she was in prison, documentation in the file indicates that they remained in contact and the applicant frequently visited his wife. The record further reflects that the applicant's wife is thirty-three years old, was born in Cincinnati, Ohio, and has resided there her entire life. Medical records state that the applicant's wife has sought treatment since 2001 for joint pain and other ailments, and in her affidavit she states that she suffers from two herniated discs.

Counsel asserts that the applicant's wife plans to relocate to Jordan if her husband is deported there, and that she would suffer extreme hardship there because she would be unable to continue seeing the doctor in Cincinnati who has been treating her back problems and other joint ailments. According to the documentation submitted by counsel, the applicant's wife was seen frequently by a doctor from 2001 until her incarceration in December 2004. These records consist mostly of reports prepared by doctors from Freiberg Orthopaedics and Sports Medicine for the applicant's referring physician. There is no more specific information provided, such as a letter in plain language from the physician describing the exact nature of her condition and any treatment or medication needed in the future. The most recent report states that the

applicant's wife was prescribed medications for pain and to help her sleep and that she was on a home exercise program including stretches and strengthening. *See report of [REDACTED], dated November 23, 2004.* The AAO is not in the position to evaluate medical records and reach conclusions concerning the severity of a medical condition, the treatment necessary, or the prognosis for recovery. There is no specific documentary evidence on the record to support the claim that the applicant's wife still requires treatment for herniated discs and other joint ailments. Further, even if medication or other treatment is required, counsel did not submit any evidence indicating this would not be available in Jordan.

Counsel additionally asserts that the applicant's wife would be in danger if she relocated to Jordan because she is a United States citizen. To support this assertion, a U.S. State Department Consular Information Sheet was submitted. According to this document, there is some anti-Western sentiment in Jordan, though it is less pronounced since the end of the Gulf War. The report further states, "Anti-U.S. sentiments are often in evidence at demonstration and protests . . . [T]hese protests are mostly non-violent or effectively contained by local authorities." *See U.S. Department of State, Consular Information Sheet – Jordan, current as of October 20, 2005.* It further states that U.S. facilities and sites frequented by Americans "may be the target of terrorist groups." Although the applicant's wife may have some fear for her safety if she relocates to Jordan, the information submitted does not document that U.S. nationals or westerners in general have been subjected to violence or other harm, but rather contains a very general statement that they may be the target of terrorist groups. The Consular Information Sheet does not advise Americans to avoid traveling to Jordan or report any widespread threat of harm to Americans or other westerners in the country. Without more specific information, the record does not establish the applicant's wife would be threatened with harm in Jordan such that relocating there would amount to extreme hardship.

Counsel also asserts that relocation to Jordan would separate the applicant's wife from her family members in the United States, which would result in emotional hardship. There is no evidence to establish that the emotional effects of being separated from her family would be more serious than the type of hardship a family member would normally suffer under these circumstances. Although the depth of her concern over the prospect of being separated from her family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation, though nearly always resulting in considerable hardship to individuals and families, does not in itself amount to extreme hardship.

Counsel additionally asserts that if the applicant's wife were to remain in the United States and the applicant were deported to Jordan, she would suffer extreme financial hardship because she has lost her employment and health insurance as a result of her incarceration, and "will be relying solely on her husband financially until she is able to find employment of her own, which may prove to be extremely difficult." According to documentation in the file, the applicant's wife was due to be released from prison on December 10, 2005. No specific evidence was submitted to support the claim that she would not be able to find employment, even if she is not able to return to her previous job. An additional letter submitted by the applicant's wife after her release from prison states that she has several health problems and that the applicant supports her emotionally and financially since she cannot work. It further states that she and the applicant are trying to have a baby but "through some complications [they] both had to take some test." *See notarized letter from [REDACTED], dated February 28, 2008.* There is no more detail provided about her medical condition or the reasons she

cannot work and no evidence submitted to support any of these assertions. Further, as the applicant's wife states in her affidavit, her parents and two siblings reside in Southern Ohio, and may therefore be in a position to provide her with financial assistance until she is able to find employment.

The emotional and financial difficulties that the applicant's wife would suffer appear to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. 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). 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. The court in *Hassan v. INS*, *supra*, further held 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. Further, the loss of the applicant's income would be a common result of deportation, and would not rise to the level of extreme hardship for the applicant's wife. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(h) of the Act.

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. 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.