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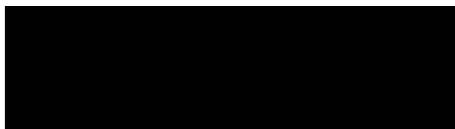
U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
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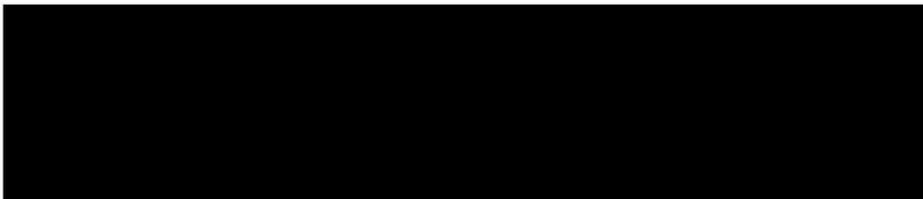


FILE:  Office: CALIFORNIA SERVICE CENTER Date: **APR 23 2008**

IN RE: 

PETITION: 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, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Zambia who 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. The applicant is the spouse of a U.S. citizen. He now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated May 12, 2006.

On appeal, the applicant contends that Citizenship and Immigration Services (CIS) erred in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(h) of the Act. *Form I-290B; Attorney's brief*.

In support of his assertions, counsel submits a brief. The record also includes, but is not limited to, criminal records for the applicant; a statement from the applicant's spouse; published country conditions reports; court records for the applicant's spouse; school tuition statements; a lease agreement; a law journal article; medical records and bills for the applicant's spouse; earnings statements for the applicant's spouse; and tax records for the applicant's spouse. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On June 11, 2002 the applicant pled guilty to False Information under Iowa Code § 718.6 and Interference under Iowa Code § 719.1. *Criminal records, Iowa District Court, Polk County*, dated June 11, 2002. The applicant was placed on probation for 12 months. *Id.* On August 22, 2002 the applicant pled guilty to the charge of Fraudulent Practice under Iowa Code § 714. *Criminal records, Iowa District Court, Polk County*, dated August 22, 2002. He was ordered to pay a fine. *Id.* The applicant was also charged with two counts of Driving Under the Influence and Driving the Wrong Way. *Criminal records, Pittsburgh Magistrates Court*, dated August 16, 2004. The dispositions for these charges are unclear.

The sections of the Iowa Code § 714, § 718.6, and § 719.1 under which the applicant was convicted involve the element of intent. Where knowing or intentional conduct is an element of an offense, the Board of Immigration Appeals has found moral turpitude to be present. *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). Thus the applicant has been convicted of three crimes involving moral turpitude.

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

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(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 (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 lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that his spouse resides in Zambia or the United States, as his spouse is not required to reside outside of 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.

If the applicant's spouse joins the applicant in Zambia, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States, as were her parents. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The record does not show that the applicant's spouse has any family ties to Zambia. The applicant's spouse is currently responsible for paying child support for her three children who reside in another state. *Statement from the applicant's spouse*, dated June 9, 2006; *Request for Reduction in Child Support Payments, Iowa District Court, Polk County*; *Earnings statements for the applicant's spouse showing child support payments*. In addition to her child support payments, the applicant's spouse asserts that she has school loans that have to be repaid. *Statement from the applicant's spouse*, dated June 9, 2006. Counsel states that if the applicant's spouse relocated to Zambia, it is unlikely that she would be able to afford to visit her United States citizen children or provide for their support. *Attorney's brief*. According to the United States Department of State, over 70% of Zambians live in poverty. *Country condition report, Background Note: Zambia, U.S. Dept. of State*, dated June 2006. Per capita annual incomes are at about one-half their levels at independence and, at \$430, place the country among the world's

poorest nations. *Id.* Unemployment and underemployment are serious problems. *Id.* While the Department of State Background Note indicates that the per capita income is \$478 a year, it also notes that this figure is based on 75% of the work force being in agriculture. *Id.* The record does not include evidence as to how the applicant's spouse, whose work experience appears to be in administration, would fare in the service sector in Zambia. *See Form G-325A, Biographic Information sheet, for the applicant's spouse, noting that she previously worked in the service sector in Zambia.* Additionally, the applicant's spouse states that the applicant provides financial support to his immediate family in Zambia. *Statement from the applicant's spouse, dated June 9, 2006.* As the applicant's father passed away in 2001, the applicant has become the life-line to the family. *Id.* According to the applicant's spouse, his culture requires that in the loss of a parent, the eldest sibling is required to maintain the family to the best of his or her ability. *Id.* He therefore sends provides \$200 to \$400 each month for his mother and seven siblings who range in age from eight to 21 years old. *Id.* The AAO notes that there is no documentation in the record to support the statements of the applicant's spouse. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm. 1998)(citing Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)).* While the AAO acknowledges that the applicant's spouse would be separated from her children if she resides in Zambia, it notes that she is already separated from her children, as her children reside in a different state. *Statement from the applicant's spouse, dated June 9, 2006.* The record does not document that the applicant's spouse would be unable to bring her children to Zambia for visits or that she would be unable to visit them in the United States. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Zambia.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse's parents and children reside in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse; Statement from the applicant's spouse, dated June 9, 2006; Divorce decree for the applicant's spouse.* The applicant's spouse states that she was previously on Buspar medication for anxiety and depression. *Statement from the applicant's spouse, dated June 9, 2006.* The applicant's spouse has been free from doctor's visits and has been able to manage her mental health issues because of the care and support she receives from the applicant. *Id.* The AAO notes that the record does not contain documentation from a licensed healthcare practitioner confirming the medical conditions claimed by the applicant's spouse. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm. 1998)(citing Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)).* Counsel asserts that it is likely that the applicant's spouse will suffer the additional hardship of increased anxiety and depression due to the separation from her husband. *Attorney's brief.* The AAO acknowledges the assertions made by counsel. However, it notes that the record fails to include any documentary evidence to support such assertions. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).* The applicant's spouse notes that she would suffer a major financial devastation if the applicant were to be taken away from her at this time. *Statement from the applicant's spouse, dated June 9, 2006.* While the AAO acknowledges the statement of the applicant's spouse, it notes that economic detriment by itself does not establish extreme hardship. *Matter of Pilch, 21 I&N Dec. 627 (BIA 1996).*

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). *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) 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. *Hassan v. INS, supra*, 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, the record does not distinguish her situation, if she remains in the United States, from that of individuals separated as a result of removal and therefore, it does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in 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 section 212(a)(2)(A)(i)(I) 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.