

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

H2

FILE:

Office: BALTIMORE, MD

Date:

DEC 01 2008

IN RE:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of the Ivory Coast 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 crimes involving moral turpitude (two petit theft convictions). The record indicates that the applicant has a U.S. citizen spouse. The applicant seeks a waiver of inadmissibility in order to reside with his spouse in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and the application was denied accordingly. *District Director's Decision*, at 3, dated July 27, 2006.

On appeal, counsel asserts that the district director erred in balancing the hardship factors against the ground of inadmissibility. *Form I-290B*, received August 29, 2006.

The record includes, but is not limited to, the applicant's pardon documents, the applicant's spouse's statements and the applicant's I-601 application and supporting documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted on May 13, 1998 and August 3, 1998 of petit theft under Chapter 22, Section 0043 of the Code of the City of Newark, Delaware. Counsel states that the governor of Delaware has pardoned the applicant for his crimes, the pardon waives the ground of inadmissibility, and *Matter of Suh*, 23 I&N Dec. 626 (BIA 2003) supports his claim. *Letter from Counsel*, dated April 27, 2007. Counsel's reasoning is not persuasive. In *Matter of Suh*, the Board of Immigration Appeals (BIA) found that a gubernatorial pardon waives only the grounds of removal specifically set forth in section 237(a)(2)(A)(v) of the Act. *Matter of Suh*, at 626. As the applicant's case is not a waiver application under section 237(a)(2)(A)(v) of the Act, his pardon does not waive his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

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

(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) of the Act provides, in pertinent part, that:

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

- (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.

The AAO notes that 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in the Ivory Coast or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Ivory Coast. Counsel states that the applicant's spouse does not have the educational qualifications or work experience to obtain gainful employment, she does not speak French or the African dialects of the Ivory Coast, the economic conditions in the Ivory Coast are bleak and she would face difficulty in adjusting to the culture of the Ivory Coast. *Counsel's I-601 Brief*, at 3, undated. The applicant's spouse states that she has asthma and she cannot receive medical treatment in the Ivory Coast. *Applicant's Spouse's I-601 Statement*, dated June 19, 2006. The record reflects that the applicant's spouse has asthma. *Applicant's Spouse's Medical Records*, dated August 3, 2006. However, the record does not include substantiating evidence of the economic conditions or lack of medical care in the Ivory Coast, or of any other types of hardship that the applicant's spouse may encounter there. Going on record without supporting documentation will not meet the applicant's burden of proof in 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 notes that adapting to a new culture is a normal result of joining a spouse who has been removed from the United States. While the AAO also notes that the Department of State has issued a Travel Warning for the Ivory Coast, the applicant's spouse has not asserted any safety or security concerns were she to reside there. Based on the record, the AAO finds that the applicant has not demonstrated that his spouse would suffer extreme hardship if she resided in the Ivory Coast permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she has asthma, arthritis, chronic back pain and depression; she cannot work on a regular basis; and she depends on the applicant for everything including financial and emotional support. *Applicant's Spouse's Statement on Appeal*, undated. The applicant's spouse states that she does not have any other means of supporting herself, she left school in the eleventh grade and has been unable to find gainful employment, and without the applicant she would be destitute and possibly homeless. *Id.* Counsel states that the applicant's spouse has limited income from her hair salon business and the applicant pays for their living expenses. *Counsel's I-601 Brief*, at 2-3. However, the record does not include substantiating evidence of the applicant's spouse's and counsel's claims of the medical, emotional and financial hardship she would endure without the applicant, other than the substantiating evidence of the applicant's spouse's asthma. Based on the record, the AAO finds that the applicant has not demonstrated that his spouse would suffer extreme hardship if she remained in the United States.

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, *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. 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his spouse would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he merits a waiver as a matter of discretion.

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. *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.