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U.S. Citizenship
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FILE:

Office: MIAMI, FLORIDA

Date: JAN 29 2008

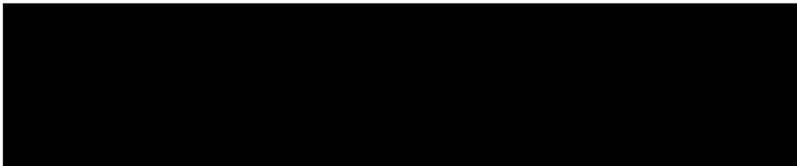
IN RE:

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 APPLICANT:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, [REDACTED] is a native and citizen of Jamaica who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The Acting District Director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the waiver application. *Decision of the Acting District Director, dated January 30, 2006.* The applicant submitted a timely appeal.

The AAO will first address the finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

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

(2) Criminal and related grounds. —

(A) Conviction of certain crimes. —

- (i) In general. — Except as provided in clause (ii), any 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, or
 - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

....

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

The Attorney General may, in his discretion, waive the application of . . . subparagraph (A)(i)(II) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if — . . . 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 permanent resident spouse, parent, son, or daughter of such alien.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Because the record reflects that the applicant pled guilty to the charge of unlawful possession of cannabis under 20 grams, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance.

The AAO will now address whether the grant of a waiver of inadmissibility is warranted.

A section 212(h) waiver is generally not available to section 212(a)(2)(A)(i)(II) cases involving controlled substance crimes. However, the section 212(h) waiver applies to controlled substance cases that involve a single offense of possession of 30 grams or less of marijuana. In this case, because the record reflects that the applicant has a single offense of possession of less than 30 grams of marijuana, the section 212(h) waiver is available to the applicant.

A section 212(h) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a "qualifying relative," *i.e.*, the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant himself is not relevant to the section 212(h) waiver and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in this case are the applicant's U.S. citizen wife and step-children. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the

case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The evidence in the record includes an affidavit, letters, photographs, a marriage license, birth certificates, criminal records, school records, a residential lease, and other documentation.

The record contains affidavits submitted by [REDACTED] the applicant’s wife. In one affidavit, she states that her life changed since meeting the applicant in 1998, a time when her children continued to live with her mother and attend school. She states that her children love the applicant as if he were their biological father; that they are a happy family, going to movies, the beach, and shopping; and that they plan to have children together. [REDACTED] states that her husband sees to their daily needs, and that she would have to go back to total dependency on the government if the applicant were removed from the country. She states that she would not be able to pay monthly bills in the United States and support her husband in Jamaica and indicates that her husband might lose his life in Jamaica due to violence there.

The affidavit submitted on appeal is similar in content to the earlier affidavit submitted by [REDACTED]

The letters submitted by friends and family members commend the applicant’s character.

The Emergency Information Cards in the record reflect that [REDACTED] has a son, [REDACTED], who was born on November 17, 1991; and a daughter, [REDACTED]

The Affidavit of Support indicates that [REDACTED] income fails to meet the 125 percent of poverty line requirement for sponsors.

The May 1, 2002 letter from [REDACTED] of Fine Finishing Corp. and Investment Firm conveys that [REDACTED] is employed by the company, receiving a weekly wage paid in cash of \$350.

The record conveys that [REDACTED]’s son, [REDACTED], is a disabled child who receives a monthly federal benefit of \$545.

In the document dated May 25, 2002, [REDACTED] states that she did not file income tax returns for the years under review because she held several odd jobs, for which she never received W-2 Forms, and some times did not work.

The AAO has carefully considered all of the evidence in the record in rendering this decision.

“Extreme hardship” to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that the qualifying relative remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record fails to establish that the applicant’s wife or stepson or stepdaughter would endure extreme hardship if they remain in the United States without the applicant.

states that if the applicant were removed from the country she would have to return to her dependency on the government for financial assistance. However, the record fails to contain documentation establishing that [REDACTED] is financially supporting [REDACTED] and her children. Except for the May 1, 2002 letter from [REDACTED] the record contains no income tax records or wage statements that would show that [REDACTED] has been gainfully employed and providing financial assistance to his family. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Regarding family separation, courts in the United States have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. And as stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt and that courts have upheld orders of the BIA that separated aliens from members of their families.

The record reflects that [REDACTED] is very concerned about separation from her husband and his separation from her son and daughter. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED] and her son and daughter, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be experienced by the applicant’s wife and son and daughter, is unusual or beyond that which is normally to be expected upon removal. See *Hassan*, *Shooshtary*, *Perez*, *Sullivan*, and *Banks*, *supra*.

The record establishes that the applicant’s step-children would experience extreme hardship if they joined him in Jamaica.

The record indicates that [REDACTED] son and daughter resided with her mother in 1998, and that her son has a disability for which he receives financial benefits from the federal government. In light of these facts, the AAO finds that [REDACTED] son and daughter would experience extreme hardship if they were to join the

applicant to live in Jamaica as her son and daughter would be separated from their grandmother, who has cared for them, and her disabled son might no longer be eligible to receive financial benefits from the federal government.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The applicant has established extreme hardship to his stepchildren in the event that they were to join him in Jamaica. However, in the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship in the event that the applicant were removed from the United States and his wife and stepchildren remained in the country. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act, 8 U.S.C. § 1182(h).

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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.