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U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI, FL

Date: **MAR 26 2008**

IN RE:

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:

SELF-REPRESENTED

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 black ink, 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 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 Brazil 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 is married to a U.S. citizen and has two U.S. citizen children. He applicant seeks a waiver of inadmissibility in order to reside with his children in the United States.

The acting district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Acting District Director's Decision*, dated February 2, 2006.

On appeal, the applicant states that his Form I-485, Application to Register Permanent Resident or Adjust Status, was denied because his spouse is going through a terrible phase and has lost interest in him and her family. He states that he loves his children and believes that they would suffer extreme hardship were they to be raised solely by a young and inexperienced mother. The applicant also asserts that he not only contributes financially to his children's lives, but is involved in raising them, going to their school meetings, following their daily progress and remaining in touch with their doctor. Although the applicant indicates that he and his spouse are not living together, he contends that she also depends on him. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated February 20, 2006; *Applicant's Statement*, dated February 23, 2006.

The record indicates that, in 2000, the applicant pled guilty in The Circuit/County Court, In and For Broward County, Florida to one count of aggravated assault involving a weapon and was placed on 18 months probation. Title XLVI, Chapter 784.021 of the 2007 Florida Statutes states in pertinent part:

- (1) An "aggravated assault" is an assault:
 - (a) With a deadly weapon without intent to kill; or
 - (b) With an intent to commit a felony.

The Board of Immigration Appeals (BIA) has long held that an individual convicted of aggravated assault involving a deadly or dangerous weapon has committed a crime involving moral turpitude even though the statute, like that just noted, does not specify a specific intent to inflict serious bodily harm or injury. The BIA has reasoned that an assault aggravated by the use of a dangerous or deadly weapon is inherently base because it is contrary to accepted standards of morality in a civilized society. *See Matter of O*, 3 I&N Dec. 193 (BIA 1948). In that the applicant has been convicted of aggravated assault, i.e., assault with a deadly weapon, he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude.

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) states in pertinent part that:

(h) The Attorney General [now Secretary of Homeland Security] 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.

As less than 15 years have passed since the 1999 event that resulted in the applicant's conviction, he is statutorily ineligible for a waiver of admissibility under section 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver pursuant to section 212(h)(B) of the Act.

A section 212(h)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar would impose an extreme hardship on a qualifying family member. In the present case, the applicant's qualifying relatives are his estranged U.S. citizen spouse and his U.S. citizen children. Hardship experienced by the alien or other family members as a result of separation is not considered in section 212(h)(B) waiver proceedings unless it would cause hardship to the applicant's spouse and children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the

qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

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, *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 notes that extreme hardship to the applicant's spouse and children must be established in the event that they reside in Brazil or in the event that they reside in the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO now turns to a consideration of the relevant factors in this case.

Evidence submitted by the applicant in support of his waiver application includes but is not limited to: letters from the applicant, his spouse and his grandmother; a copy of the applicant's marriage certificate, copies of the birth certificates for the applicant's two children; medical documentation related to the applicant's grandmother; W-2 Wage and Tax Statements for the applicant and his spouse; and an employment letter for the applicant's spouse.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse, [REDACTED] or children in the event that they reside in Brazil. The applicant, however, does not address the relocation of [REDACTED] or his children to Brazil. Accordingly, the AAO is unable to determine that moving to Brazil with the applicant would constitute extreme hardship for either his spouse or his children.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and children remain in the United States. On appeal, the applicant submits two letters from [REDACTED], dated January 14 and February 22, 2006, who asserts that their children are heavily dependent on the applicant's financial support and that it would be extremely hard for her to take care of the children if she had

to depend solely on her own earnings to survive. She indicates that she receives child support from the applicant that would end if he were to be removed from the United States. [REDACTED] also states that the children spend weekends with their father and that he does all the normal things that father do with children, including attending school meetings and doctors' appointments. She contends that it would be an emotional disaster for the children to grow up without their father. She also asserts that their son, [REDACTED] has been having behavioral problems at school and home, and that it would make his condition worse if he were unable to see his father.

The AAO notes that the record offers no documentary evidence to support [REDACTED]'s claims regarding the impact of the applicant's removal on their children, e.g., an evaluation from a licensed health care professional establishing [REDACTED]'s emotional problems and the impact that the applicant's absence would have on his situation. Neither does the record include any documentation that demonstrates that [REDACTED] receives child support from the applicant or is, in any way, dependent on his financial support. Going on record without supporting documentary evidence is not sufficient to meet the 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)).

The record also includes a February 23, 2006 letter from the applicant's grandmother, [REDACTED] who is a lawful permanent resident of the United States, [REDACTED] indicates that she raised the applicant after his mother died and that she needs the applicant's support in her daily life. A number of medical records for [REDACTED] are also contained in the record. [REDACTED] however, is the applicant's grandmother and is, therefore, not a qualifying relative in a Form I-601 waiver proceeding. As the record does not indicate how the hardship that [REDACTED] claims she would experience as a result of the applicant's removal would affect [REDACTED] or the applicant's children, the qualifying relatives in this case, her claims of hardship will not be considered.

When reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, the record does not support a finding that [REDACTED] and the applicant's children would face extreme hardship if they were to remain in the United States following the applicant's removal. The applicant has submitted no evidence that demonstrates that the distress or difficulties experienced by [REDACTED] or his children would exceed those normally associated with the removal of a spouse and father. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and emotional and social interdependence. While the prospect of separation or relocation nearly always results in considerable hardship to the individuals and families involved, the Congress, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," did not intend that a waiver be granted in every case where a qualifying relationship and, thus, familial and emotional bonds exist. The point made in this and prior AAO decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases. Therefore, the applicant is not eligible for a waiver under section 212(h) of the Act.

In that the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the AAO will not assess the relative weights of the positive and negative factors in the present case.

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.