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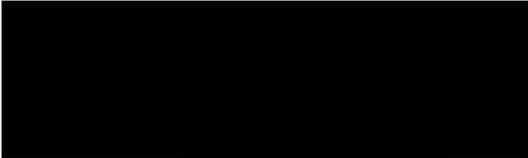
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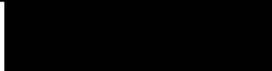
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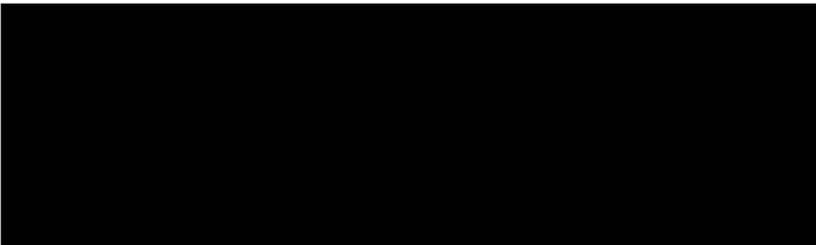
Date: OCT 02 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii. A motion to reopen/reconsider was filed. The district director granted the motion and upheld his decision to deny the waiver. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Western Samoa, was found 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 sought 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 U.S. national spouse and four adult children, two who are U.S. nationals and two who are U.S. citizens.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 20, 2006.

In support of the appeal, counsel submits a brief, dated June 13, 2006. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part:

[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:

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 . . . ¹

Regarding the applicant's grounds of inadmissibility, the record reflects the commission of a crime involving moral turpitude. In November 1996, the applicant was convicted of the crime of Deviate Sexual Assault, a class C felony in violation of section 46.3612 of the American Samoa Code. The applicant was sentenced to a jail term of seven years. After serving one-third of his prison term, he was recommended for and released on parole. As the aforementioned crime was committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant is eligible for a section 212(h) waiver of the bar to admission.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant and/or his extended family experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's spouse and/or adult 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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

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.

This matter arises in the Honolulu District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

¹ The AAO notes that section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. If extreme hardship is established, CIS must then assess whether to exercise discretion.

Counsel first contends that the applicant's spouse will suffer physical and emotional hardship were the applicant removed from the United States. As stated by counsel,

...Applicant's wife suffers from potentially life-threatening medical conditions, including hypertension, obesity, hypercholesterolemia, and diabetes mellitus....

Brief in Support of Appeal, dated June 13, 2006.

As the applicant's spouse further elaborates,

...If my husband is deported, it will cause all of us extreme hardship.... I need my husband for his support of his work and the responsibility of his family....

Letter from [REDACTED] dated March 2, 2005.

To corroborate the applicant's spouse's medical conditions, a letter is provided by [REDACTED] states,

M.D. As

...Mrs. [REDACTED] [the applicant's spouse] is a patient currently under my care for hypertension, obesity, hypercholesterolemia, and diabetes mellitus. She has regular follow up outpatient visits at my office and needs monitoring on her prescribed medicines. Without her family network and assistance, she risks congestive heart failure.

I am aware that her family helps with her transport and dispensing of her medicines. So far, this has sufficiently kept my patient stable and safe from hospital admissions....

Letter from [REDACTED], M.D., dated February 25, 2005.

To begin, Dr. [REDACTED] confirms that the applicant's spouse needs medical follow-up and dispensation of medication. He further references that the applicant's spouse's family have been assisting her with these needs. As such, the record fails to establish that without the applicant's physical presence specifically, the appellant's spouse would suffer extreme hardship. Moreover, it has not been established that the applicant's spouse would be unable to visit the applicant in Western Samoa, or any other country to which the applicant relocates, due to her medical conditions. Finally, it has not been established that the applicant's adult children, one of whom lives with the applicant and his spouse in the same residence, and/or the applicant's spouse's seven siblings, would be unable to provide the emotional and physical support that the applicant's spouse may need while the applicant resides abroad.² Going on record without supporting documentary

² The AAO notes that in a letter, dated March 1, 2004, the applicant's daughter, [REDACTED] who lives with the applicant and his spouse, states that "[w]hen my mom [the applicant's spouse] is really sick, I have to stay home to take care of her. I take her to the hospital, take her to her doctor's appointments, and look after her...." *Letter from [REDACTED]*

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)). While the applicant's spouse may need to make alternate arrangements with respect to her daily care, it has not been established that such arrangements would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal 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.

Counsel further contends that the applicant's spouse and adult children will suffer financial hardship if the applicant were removed. As stated by counsel,

Applicant plays a crucial role in the care of his wife and the family in general. Although three of his children live in the State of Hawaii and also are available to assist with their mother's medical condition, all three children living in the State of Hawaii have their own families and parental obligations.... Applicant has provided financial support to his son's family when they have fallen on hard times.... Applicant's daughter who petitioned for him has four children.... She is able to stay at home and take care of her children and her mother as needed only because of the financial support which Applicant provides....

Supra at 3-4.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . .

██████████ dated March 1, 2004. As referenced above, no corroborating documentation has been provided that establishes that the applicant's spouse is unable to receive the assistance she needs from her other adult children and/or that she is unable to make alternate arrangements with respect to her care to ensure that she has the assistance she needs. Based on ██████████'s letter, quoted above, it appears that the applicant's spouse's entire family network has helped her in the past, not just the applicant and or their daughter, ██████████.

simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, no financial documentation has been provided to establish the applicant’s and his spouse’s economic situation, including detailed information about their income and expenses, to corroborate that the applicant’s spouse will suffer extreme financial hardship due to the applicant’s inadmissibility. In addition, the applicant has not explained why the applicant’s spouse’s adult children are unable to support themselves financially, and in turn, their own mother should the need arise. Finally, no documentation has been provided that establishes that the applicant would be unable to obtain gainful employment abroad, thereby assisting in the U.S. household’s finances. While the applicant’s spouse and adult children may need to make alternate arrangements with respect to their household finances and the care of the applicant’s grandchildren, it has not been shown that such alternate arrangements would cause them extreme hardship.

Finally, counsel contends that under Samoan culture, the applicant’s removal from the United State would cause extreme cultural hardship to the applicant’s spouse and adult children. As further explained by the applicant’s daughter, [REDACTED],

In Hawaii, my father [the applicant] is the chief in my mom’s [the applicant’s spouse’s] family. Being a chief, he has a ‘name’ so he has the right to talk in the family. If my dad didn’t have that name, he wouldn’t have the right to talk, he’d just be a husband. My mom gave her name to my father so he could represent her family.

In my mom’s family in Hawaii, they have only two family representatives: my father and my mom’s brother who is the speaker for them all. My father tells the speaker, my uncle, what to say in the family counsel. Then my uncle speaks for all of us. Even my mother’s older brothers and sisters cannot speak in the family council; only my father and the one uncle can speak for the rest of us. My father has a very important role as our representative.

When there is a passing in the Samoan community, key community members and family members provide monetary contributions.... Everybody counts in the Samoan family, and my father as the family representative is responsible for making sure that everyone receives something.

My father keeps a book to keep track of family gifts and donations to make sure that everyone's contributions are accounted for....

My father is also responsible for resolving family disputes....

Supra at 2.

To begin, were the applicant removed from the United States, it has not been established that he would be unable to continue being chief of the family, thereby representing the family's interests. Moreover, even if he were unable to continue in this role, it has not been established that the applicant's spouse's siblings and/or one of her adult children would be unable to represent her family's interests. While the AAO recognizes that being chief plays an important role as a family representative, it has not been established that the family's interests can not be duly considered by another family relation, irrespective of whether that person is chief or not. As such, it has not been established that the applicant's spouse and/or adult children will face extreme hardship were the applicant removed from the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates with the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why his spouse and/or adult children are unable to relocate abroad to reside with the applicant.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his spouse and/or adult children would suffer extreme hardship if he were removed from the United States, and moreover, the applicant has failed to show that his spouse and/or adult children would suffer extreme hardship were they to relocate to another country were the applicant removed from the United States. The record demonstrates that the applicant's spouse and/or adult children face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse/parent is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.