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U.S. Citizenship
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#2

[REDACTED]

FILE: [REDACTED] Office: BALTIMORE, MD Date: SEP 11 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:

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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad 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 seeks 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.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated October 24, 2005.

On appeal, the applicant contends that his U.S. citizen wife will suffer significant hardship if he is prohibited from remaining in the United States. *Statement from Applicant*, dated November 1, 2005.

The record contains statements from the applicant and his wife; a letter from the applicant's former landlord; documentation in connection with the applicant's wife's medical treatment; documentation regarding the applicant's medical insurance; documentation regarding the applicant's income and employment; a request from the applicant for oral argument before the AAO; a copy of birth records for the applicant and his wife; a copy of the applicant's passport; documentation relating to the applicant's criminal history; copies of tax records for the applicant and his wife; a letter reflecting that the applicant's wife was pregnant as of March 14, 2005, and; letters from individuals attesting to the applicant's good character. The entire record was reviewed and considered in rendering this decision.

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

- (A)(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) [or] (B) . . . 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 [now the Secretary of Homeland Security (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 record reflects that, on June 9, 2004, the applicant received probation before judgment for two separate offenses in Maryland, Assault – Second Degree and Deadly Weapon – Intent to Injure. *Defendant Trial Summary*, dated June 9, 2004. The record reflects that these offenses were committed against the applicant's wife. Documentation from the applicant's criminal cases reflects that, should the applicant violate the terms of his two-year probation, judgment may be entered against him as if he had been found guilty. *Defendant Trial Summary* at 1. These orders of probation before judgment constitute convictions for purposes of determining inadmissibility under the Act. *See, e.g.*, Section 101(a)(48)(A) of the Act; H.R. Conf. Rep. 828, 104th Cong., 2nd Sess. at 223-224. The applicant's offenses constitute crimes involving moral turpitude. *See, e.g., Nguyen v. Reno*, 211 F.3d 692, 694-95 (1st Cir. 2000); *Matter of Logan*, 17 I&N Dec. 367 (BIA 1980); *Yousefi v. INS*, 260 F.3d 318, 326-27 (4th Cir. 2001). Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

Section 212(h)(1)(B) 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. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen wife. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

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 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.)

On appeal, the applicant contends that his U.S. citizen wife will suffer significant hardship if he is prohibited from remaining in the United States. *Statement from Applicant*, dated November 1, 2005. The applicant

provided that he is the primary economic provider for his wife and three children. *Id.* The applicant indicated that his landlord declined to renew his lease, and that his family requires his income to secure a new residence. *Id.* The applicant explained that his wife was hospitalized twice, and that she requires health insurance that he obtains through his employment. *Id.*

The record contains documentation to show that the applicant's wife received medical attention at a hospital on two separate occasions, in 2004 and 2005, as well as mental health services in January and February 2005. *Medical Records for Applicant's Wife.* The record further reflects that the applicant's wife was pregnant as of March 14, 2005. *Letter from Johns Hopkins Community Physicians*, dated March 14, 2005.

The record contains a Form I-864, Affidavit of Support, that reflects that the applicant's wife held employment at a rate of \$8 per hour for 40 hours per week as of March 3, 2004. *Affidavit of Support*, dated March 3, 2004.

The applicant's wife stated that she and the applicant are working to resolve the conflict that led to the applicant's conviction. *Statement from Applicant's Wife*, dated March 9, 2005. She stated that she has a heart condition that prevented her from working during her pregnancy. *Id.* at 2. She provided that the applicant contributes emotionally, financially, and physically to their household. *Id.*

Upon review, it is first noted that the applicant has requested oral argument before the AAO. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the applicant has identified no unique factors or issues of law to be resolved. The applicant has had ample opportunity to supplement the written record of proceeding to fully represent the facts and issues in this matter. Consequently, the request for oral argument is denied.

The applicant has failed to show that a qualifying relative will experience extreme hardship should he be prohibited from remaining in the United States. The record reflects that the applicant has a U.S. citizen wife. There is also an indication that the applicant may have a U.S. citizen child and two U.S. citizen stepdaughters. However, the record does not contain confirmation of these relationships, nor is there any specific claim of hardship to any of the children. So, although the applicant may have other qualifying relatives, only hardship to his wife will be examined.

The applicant has not shown that his wife will experience extreme hardship should the present waiver application be denied. The applicant indicates that his wife has health problems that require care. However, the record does not contain an explanation from a medical professional regarding any existing conditions suffered by the applicant's wife, or a description of care she currently receives or requires. While the applicant's wife received medical treatment on several occasions in 2004 and 2005, the last documented instance of medical services occurred in February 2005, approximately nine months before the present appeal was filed. The applicant indicated that his wife requires health insurance that is provided through his employment. Yet, the applicant has not shown whether his wife continues to be employed, or whether she is unable to receive medical coverage through her employment. Thus, the AAO cannot conclude that the

applicant's wife has health conditions or medical needs that would create significant hardship should the applicant depart the United States.

The applicant and his wife attest that the applicant's wife benefits from financial assistance from the applicant. However, the record does not reflect the applicant's wife's current employment status or income. Nor has the applicant submitted a description of his household's regular expenses, such that the AAO can determine the financial needs of the applicant's wife. Accordingly, the applicant has not established that his wife would experience significant financial hardship should he depart the United States.

The applicant's wife suggested that she would experience emotional hardship if she is separated from the applicant. However, the applicant has not submitted explanation or evidence to show that this hardship is greater than that which would ordinarily be expected of the family members separated as a result of inadmissibility. U.S. court decisions have 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 applicant has not described any hardships his wife would face should she relocate to Trinidad to maintain family unity, thus he has not established that she would experience extreme hardship should she relocate abroad with him.

Based on the foregoing, the applicant has not shown that, should he be prohibited from remaining in the United States, his wife will suffer extreme hardship as required by section 212(h)(1)(B) of the Act. 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.