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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: JAN 08 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director for Services, 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 Honduras who entered the United States without inspection in June 1996. The applicant was found to be inadmissible to the United States pursuant to 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 possession of 0.77 grams of marijuana on October 6, 1996. The applicant married a U.S. citizen on July 25, 1998. The applicant seeks a waiver of inadmissibility in order to reside with his wife and child 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 his U.S. citizen spouse and child. The application was denied accordingly.

On appeal, counsel contends that the applicant's prospects of obtaining employment in Honduras to support himself and his family are minimal. Counsel contends that the applicant's son requires specialized education that is unavailable in Honduras and the applicant's spouse requires specialized medical care and will be subjected to life-threatening difficulties in Honduras. On the other hand, counsel asserts that the applicant cannot leave his wife and child behind in the United States. Counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services] decision denying the applicant's waiver is arbitrary and capricious; abuses discretion by failing to consider all the factors favorable to the applicant and misapplies and misinterprets the law.

On appeal, counsel submits a copy of a certified laboratory report from the New Jersey State Police, dated January 23, 1997; a copy of a receipt from the Township of South Brunswick, New Jersey, dated November 1, 2002; a copy of a letter written by the applicant's wife, dated November 16, 2002; a copy of the certificate of marriage for the couple; a copy of the U.S. birth certificate of the applicant's wife; a copy of the U.S. birth certificate of the applicant's child; a Report of Psychological Findings compiled by Gloria Morote, Ph.D., dated April 21, 2003 and curriculum vitae for Gloria Morote, Ph.D.

The record also contains two statements from the State of New Jersey and the Municipal Court of New Jersey, respectively, demonstrating the dispositions of the applicant's arrest for marijuana possession and copies of tax return statements for the applicant and his wife. The entire record was reviewed and considered in rendering a decision on this appeal.

Section 212(a)(2) 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
>
> . . . .
>
> (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:

> (h) The Attorney General may, in his discretion, waive the application of . . . subparagraph (2)(A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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 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 . . .

Counsel cites *Matter of Habib*, 11 I&N. Dec. 464 (BIA 1965) for the proposition that a waiver should be granted when removal would result in exceptional hardship to the United States citizen wife and child for whom the applicant would be able to provide only a meager existence if they accompanied him abroad, and, the applicant would be unable to support two households if his family did not accompany him abroad. *See Brief on Behalf of the Appellant, Enil E. Martinez-Nunez, dated June 5, 2003 at 5.* The AAO finds it significant that the applicant in *Habib* was an

exchange visitor who was seeking waiver of the two-year foreign residence requirement of section 212(e) of the Act while the applicant in this application seeks a waiver for a criminal conviction that renders him inadmissible to the United States. In *Habib*, the Board of Immigration Appeals (BIA) emphasizes that the applicant established that it is the practice of the Egyptian government not to permit its young citizens, who have been out of the country as nonimmigrant students or exchange visitors, to again leave the country. The AAO finds no parallel circumstance in this application. Further, the AAO notes that the statutory language of section 212(e)(iii) of the Act, 8 U.S.C. § 118(e)(iii), states "exceptional hardship" whereas section 212(h), 8 U.S.C. § 1182(h), of the Act states "extreme hardship." Congress envisioned different standards for different immigration situations and the AAO therefore utilizes applicable case law to assess the current application.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999), the BIA provides a list of factors it deems relevant in determining whether an alien has established extreme hardship. These 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. *See Cervantes-Gonzalez* at 565-566.

Counsel contends that the submitted psychological evaluation for the applicant's family collaborates the applicant's claim of extreme hardship. The AAO notes that there is no documentation in the record indicating an ongoing relationship between the psychologist preparing the report and the applicant's wife and/or child and no further treatment is indicated for any members of the family. The report concludes that if the applicant's wife is separated from her husband, her depression is likely to intensify. *See Report of Psychological Evaluation by Gloria Morote, Ph.D.* The report finds that the applicant's wife was treated with psychotropic medications for previous bouts of depression. The report refers to the couple's child as "seriously disabled" and states that he displays marked developmental delays in speech and language. *Id.* However, beyond the findings of the psychological report, the record does not establish how extensive the needs of the child are nor does it demonstrate the applicant's role in his child's development and/or treatment beyond possession of "good parenting skills." *Id. at 1.*

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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 *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that is unusual or beyond that which would normally be expected upon deportation. The court additionally stated that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court 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 U.S. citizen spouse would suffer extreme hardship if he were not allowed to immigrate to the United States. 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. *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.