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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

NOV 10 2004

FILE: [redacted] Office: BALTIMORE, MD Date:

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:

[redacted]

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, Director
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 Liberia who was found to be 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 is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 7, 2002.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] has not applied the correct standard for evaluating waiver cases. In addition, counsel asserts that CIS ignores substantial evidence of extreme financial hardship and errs regarding facts integral to the application including the applicant's citizenship and paternity of his daughter. *Form I-290B*, dated May 17, 2002.

In support of these assertions, counsel submits a notarized statement of monthly expenses and gross income; a copy of the United States birth certificate of the applicant's daughter; a copy of the United States certificate of birth for the applicant's daughter and copies of financial and tax statements for the applicant and his spouse. The entire record was considered in rendering this decision.

The record reflects that on or about October 26, 1987, the applicant was convicted of Making False Statement; Aiding and Abetting in violation of 18 U.S.C. § 1001 and 1002. The applicant was sentenced to a term of imprisonment of two years. The term was suspended and the applicant was placed on probation for a period of five years; required to make restitution in the amount of $5,100.00 and pay an assessment of $50.00.

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

> (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (ii) Exception – Clause (i)(I) shall not apply to an alien who committed only one crime if –
>
> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States ...

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

Counsel contends that the applicant's spouse and children would suffer as a result of relocation to Liberia in order to remain with the applicant. *Memorandum of Law in Support of Waiver Application Under INA Section 212(h)(1)(B).* Counsel states that Liberia is plagued by civil war and unrest as evidenced by its residence on the list of countries meriting Temporary Protected Status in the United States. *Id.*

Counsel asserts that the inadmissibility of the applicant will cause extreme financial hardship to the applicant's spouse and children if they remain in the United States in the absence of the applicant. *Id.* Counsel submits a notarized statement of monthly expenses to support this assertion. The statement of expenses provided includes amounts of $500 for food and $200 for clothing on a monthly basis. *Monthly Expenses*, dated May 21, 2002. The AAO notes that the record fails to establish that the amounts of these expenditures are not discretionary. Counsel contends that the applicant's presence is required in order for his spouse to afford car loan payments and their home mortgage. *Memorandum of Law in Support of Waiver Application Under INA Section 212(h)(1)(B)* at 2. The AAO finds that the record fails to establish that the living and transportation arrangements of the applicant's spouse cannot be altered in order to accommodate a change in income. Further, the record fails to demonstrate that the applicant will be unable to provide financial support to his family from a location outside of the United States. Counsel cites precedent to support the premise that economic detriment coupled with other factors can lead to extreme hardship. *Id.* (citing *Palmer v. INS*, 4 F.3d. 482 (7th Cir. 1993)). The record, however, fails to evidence "other factors" beyond separation and does not substantiate financial hardship rising to the level of extreme.

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. 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. The AAO recognizes that the applicant's spouse and children will likely endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and children caused by the applicant's inadmissibility to the United States. 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.