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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

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: OCT 29 2004

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 Interim 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 sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(6)(C)(i), for having been convicted of a crime involving moral turpitude and for having attempted to procure a benefit under the Act by fraud or willful misrepresentation. The applicant is the son of lawful permanent residents of the United States and the parent of two United States citizen children and seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and 1182(i), so that he may reside in the United States with his parents and children.

The interim 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. The interim district director further concluded that the applicant had failed to evidence the lawful permanent resident status of his mother and failed to provide court dispositions for his criminal offenses. *Decision of the Interim District Director*, dated July 30, 2003.

On appeal, the applicant states that denial of the waiver will impose extreme hardship on his permanent resident mother who suffers from diabetes causing her financial difficulties and on his two United States citizen children for whom the applicant is the sole source of support. *Form I-290B*, dated September 4, 2003.

In support of these assertions, the applicant submits a copy of the permanent resident card issued to his mother; a copy of the Form I-130 filed on the applicant's behalf listing his mother; a copy of the applicant's registration with the selective service; a copy of the applicant's 2002 Individual Income Tax Return; copies of the United States birth certificates of the applicant's son and daughter; a statement from the applicant's wife and a copy of the title to the applicant's house. Further, the applicant indicated that medical records for the applicant's mother would be submitted. The AAO notes that over one year has elapsed since the filing of the appeal and no additional documentation has been entered into the record. The entire record was considered in rendering this decision.

The record reflects that on or about September 13, 1993, the applicant was convicted of Petit Larceny and was sentenced to 30 days imprisonment and ordered to pay a fine of $200. The AAO notes that the jail sentence was suspended conditioned upon the applicant being of good behavior and keeping the peace. The record further reflects that the applicant entered into a sham marriage for purposes of obtaining an immigration benefit and failed to claim the above-cited convictions or his prior marriage in filing the Form I-485 (Application to Register Permanent Residence or Adjust Status).

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-
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> > (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 . . .

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO acknowledges that the applicant contends that he did not misrepresent his criminal record on the Form I-485 application. The applicant states, "I said I had no arrests because no police officer came and arrested me on either of these charges." *Letter from* [redacted] dated March 8, 2001 (emphasis omitted). Indeed, a representative definition for arrest reads, "1. To stop; check: *a brake that automatically arrests motion; arrested the growth of the tumor.* 2. To seize and hold under the authority of law. 3. To capture and hold briefly (the attention, for example); engage." *See* www.dictionary.com. The AAO notes, however, that the question on the Form I-485 asks if the applicant has ever been "arrested, cited, charged, indicted, fined, or imprisoned ..." As the applicant was ultimately convicted of [redacted] he clearly should have responded in the affirmative to the question. Further, on appeal, the applicant fails to provide a court disposition of his arrest for Bad Checks as requested by the Interim District Director. These facts coupled with the applicant's inadmissibility under section 212(a)(2)(A) constitute multiple grounds of inadmissibility.

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. A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under sections 212(h) and 212(i) 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.

The record contains a brief letter from the applicant's spouse stating that she is a full-time student and the applicant is the sole provider for their household, which includes two children. *Letter from Minisiah Boayue-Acqui,* dated August 29, 2003. The record fails to establish that the applicant's spouse is unable to work to financially provide for her family while pursuing her education and the record fails to establish when the applicant's wife will complete her degree or other educational objectives.

The applicant states that his permanent resident mother suffers with diabetes as a result of which one of her toes was amputated. *Form I-290B*, dated September 4, 2003. The applicant further states that his mother has financial difficulties as a result of diabetes. Id. The record fails to substantiate the claims of the applicant with regard to his mother's medical condition. Further, the applicant fails to make any assertions regarding the level of care required by the applicant's mother on a daily basis and does not demonstrate the extent to which the applicant's father is able to contribute to the financial difficulties that the applicant's mother experiences.

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 recognizes that the applicant's parents 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 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.