U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MIAMI Date: NOV 07 2005

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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica 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 and reside with his U.S. citizen wife and daughter.

The acting 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 Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated July 9, 2001.

It is noted that the district director, Miami, initially denied the applicant's Form I-601 application on June 1, 2001, with an attachment explaining the reasoning behind the decision. The applicant filed a Form I-290B appeal from that decision, which was received by Citizenship and Immigration Services (CIS) on June 19, 2001. The acting district director then issued a superseding decision on July 9, 2001, referenced above, to correct an erroneous statement regarding the applicant's criminal convictions. Specifically, the first decision stated that the applicant was convicted of one crime on January 21, 1994 and three crimes on October 11, 1993, when in fact the applicant was convicted of all four crimes on January 21, 1994. In the superceding decision, the acting district director correctly eliminated the reference to convictions on October 11, 1993, while preserving reference to the applicant's January 21, 1994 conviction for Grand Theft. On July 27, 2001, the applicant filed an identical Form I-290B in response to the acting district director's superceding decision.

On appeal, the applicant contends that CIS based the denial on an erroneous conclusion that he was convicted of crimes on two separate dates, representing convictions for separate schemes of criminal conduct, when in fact he was convicted of crimes in the course of a single scheme. *Statement on Form I-290B*. The applicant asserts that, under the authority of section 237(a)(2)(A)(ii), he is not inadmissible, as his crimes were part of a single scheme. *Brief in Support of Appeal* at 3. The record further contains statements regarding hardship to the applicant's U.S. citizen wife and child. *Statement from Applicant's Wife in Support of Form I-601*.

The record contains a brief from the applicant in support of the appeal; two statements from the applicant's wife in support of the initial Form I-601, Application for Waiver of Ground of Excludability; a psychological evaluation for the applicant's wife; a copy of the applicant's wife's birth certificate; a copy of the applicant's daughter's birth certificate; the applicant's marriage certificate; four letters from employers of the applicant's wife; a letter from the applicant's employer; tax documentation for the applicant and his wife, and; copies of documentation regarding the applicant's criminal convictions. 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) . . . 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 the applicant has been convicted of crimes involving moral turpitude. Specifically, on January 21, 1994, the applicant was convicted of Grand Theft in the Third Degree, Possession of Burglary Tools, and Theft/ID Deprive. Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

On appeal, the applicant contends that CIS based the denial on an erroneous conclusion that he was convicted of crimes on two separate dates, representing convictions for separate schemes of criminal conduct, when in fact he was convicted of crimes in the course of a single scheme. *Statement on Form I-290B.* However, while the initial decision on the applicant's Form I-601 application indicated that he was convicted of crimes on two separate occasions, the superceding decision corrected this erroneous statement, and only referenced the applicant's conviction for Grand Theft on January 21, 1994. Thus, the denial of the applicant's waiver application was not based on a finding that he was convicted of crimes pursuant to two or more schemes of criminal conduct.

The applicant asserts that, under the authority of section 237(a)(2)(A)(ii), he is not inadmissible, as his crimes were part of a single scheme. *Brief in Support of Appeal* at 3. However, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act, not section 237(a)(2)(A). Section 237 of the Act addresses general classes of deportable aliens, while section 212 addresses general classes of aliens ineligible to receive visas and ineligible for admission, as well as waivers of inadmissibility. For the purpose of assessing admissibility under section 212(a)(2)(A)(i)(I) of the Act, it is irrelevant whether the applicant was convicted of multiple crimes in a single scheme of conduct, or separate schemes. The mere fact that the applicant was convicted of multiple crimes involving moral turpitude renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Thus, the applicant has not shown that he was erroneously deemed inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Therefore, he requires a waiver pursuant to section 212(h) of the Act.

The AAO notes that section 212(h) 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. Section 212(h)(1)(B) of the Act. Hardship the applicant himself experiences upon being found inadmissible 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 and child. *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.

On appeal, the applicant submits a psychological evaluation for his wife, conducted by [redacted] reported that the applicant's wife's psychological test results "suggested mild depression and anxiety, most likely related to her current circumstances." *Report from* [redacted] at 2-3. [redacted] indicated that the applicant's wife's behaviors are "most consistent with those of . . . Adjustment Disorder with Mixed Anxiety and Depressed Mood." *Id.* at 3.

In support of the applicant's initial Form I-601 application, his wife submitted two statements addressing hardship she would endure if the applicant is compelled to depart the United States. The applicant's wife stated that she is a full-time student, and thus she is unable to work full-time. *Statements from Applicant's Wife in Support of Form I-601*, dated May 19, 1999. [redacted] commented that the applicant's wife has been employed as a secretary for the State Attorney's Office for one and one half years, and she holds an Associate of Arts degree from Broward Community College and an Associate of Science degree from City College in Fort Lauderdale, Florida. *Report from* [redacted] The applicant's wife indicated that the applicant pays for the majority of their joint expenses, including rent, childcare expenses, and a portion of her educational costs. *Id.* The applicant's wife provided that she would be unable to continue school or maintain her lifestyle without the applicant's economic support. *Id.* The applicant's wife noted that Jamaica has excellent schools, but that she wishes to pursue her education and career in the United States. *Id.*

The applicant's wife explained that the applicant provides health insurance and savings for their young child. *Id.* She explained that their child is emotionally attached to the applicant. *Id.* The applicant's wife stated that their child needs the applicant in her life for support and guidance. *Id.* [redacted] reported that the applicant explained that their daughter would no longer be able to attend private school without the applicant's assistance. *Report from* [redacted]

The applicant's wife further explained that she and the applicant have a close relationship, and that she will experience emotional hardship if he is compelled to depart the United States. *Id.* She expressed that she wishes to keep her family together. *Id.*

Upon review, the applicant has not established that his wife or child will suffer extreme hardship as a result of his inadmissibility. The applicant's wife provides that she will experience emotional hardship due to separation from the applicant. The applicant's wife explains that the applicant's child will be deprived of the love and guidance of her father if the applicant departs. However, while the AAO acknowledges that such separation is difficult, the applicant has not established that the emotional consequences to his wife and child go beyond those which are commonly experienced by the families of aliens deemed inadmissible. 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 psychological evaluation conducted by [redacted] is of limited use in the present proceeding due to the passage of over five years. It is noted that it was conducted for the purpose of this proceeding, and does not represent treatment for a mental health disorder. The applicant has provided no evidence that his spouse received or required follow-up evaluation or care from a mental health professional. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant's spouse, it does not show that, should the applicant depart the United States, his spouse will suffer emotional consequences beyond those ordinarily experienced by families of those who are deported.

The applicant's wife explained that she would experience economic hardship if the applicant is compelled to depart the United States. However, the applicant has not shown that his wife will be unable to meet her and her child's financial needs in the applicant's absence, should they remain in the United States. The record shows that the applicant's wife has held five different jobs, earning as much as $18,500 per year for a single position. While the AAO understands that she wishes to continue her education as a full-time student, the necessity to decrease her studies and increase her employment in order to meet her expenses is not deemed extreme hardship. The AAO further acknowledges that the applicant's wife may be required to secure and fund childcare expenses, yet the record does not establish that she would be unable to do so. As the applicant's child would have her U.S. citizen mother to provide for her, it is evident that her financial needs would be met. Accordingly, the applicant has not established that his wife or child would suffer economic difficulty that amounts to extreme hardship should he depart the United States. Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

It is noted that the applicant's wife and child may relocate abroad with the applicant if they choose. The applicant's wife indicated that she could continue to pursue her education in Jamaica, though she wishes to do so in the United States. The applicant has not provided information regarding his wife's or child's connections to Jamaica or the United States, such that the AAO can assess whether adjustment to life in Jamaica would present unusual challenges or hardships. However, as U.S. citizens, the applicant's wife and child are not required to reside outside of the United States as a result of the applicant's inadmissibility.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife or child should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. 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.