



U.S. Citizenship
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[Redacted]

FILE:

[Redacted]

Office: NEWARK, NJ

Date: JUN 15 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Egypt 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 citizen of the United States and the parent of citizens of the United States. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) 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. The district director further determined that the applicant did not warrant a favorable exercise of discretion because he lacked substantial equities in the United States, committed grave offenses and demonstrated disregard for the immigration laws of the United States. The district director denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of District Director*, dated September 14, 2004.

On appeal, counsel states that the waiver application should have been granted. Counsel contends that the positive factors in the application clearly outweigh the negative factors. *Form I-290B*, dated October 4, 2004. In support of these assertions, counsel submits a brief. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The criminal history of the applicant is outlined in detail in the decision of the district director.

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.

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).

The AAO notes that counsel errs in stating that only hardship imposed on the applicant's United States citizen spouse, and not the applicant's qualifying relative children, may be considered under section 212(h)(1)(B) of the Act. *Statement in Support of Appeal*, dated April 11, 2005.

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.

On appeal, the record contains general statements from counsel indicating that the applicant's spouse will suffer if she remains in the United States in the absence of the applicant as a result of emotional, financial and psychological hardship imposed on her and on the couple's four children, two of whom are biologically the children of the applicant. *Statement in Support of Appeal*. Counsel points to a letter of hardship previously submitted by the applicant's spouse to support these assertions. The previously submitted letter states that the four children of the applicant's spouse "think the world of [the applicant]". *Letter from [REDACTED]*, dated March 27, 2004. The letter indicates that the thought of separating the children from their father "tears at [the applicant's spouse's] heart". *Id.* In the letter, the applicant's spouse expresses that she relies on the applicant for support in raising the family and states that he is also "a special friend" who understands her. *Id.* The letter explains that the applicant's spouse would face "severe hardship" if she were forced to financially support the family on her own. *Id.* While the AAO sympathizes with the plight of the applicant's spouse, the record fails to support her assertions through documentation. In the absence of substantiating documentation containing particularized information regarding the emotional, financial and psychological hardship imposed on the applicant's spouse and children, the AAO is unable to render a finding of extreme hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO acknowledges counsel's contention that separation from the applicant would result in the applicant's spouse losing her husband and the father of their children and in effect, result in the end of the marriage. *Statement in Support of Appeal*. However, 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 spouse and/or children would 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/or 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.